

L.R. 1.1

Scope of the Rules

- (a) **Title and Citation.** These rules shall be known as the Local Rules of the United States District Court for the Northern District of Indiana. They may be cited as “N.D. Ind. L.R. __.”
- (b) **Effective Date.** These rules, **as amended**, become effective on **December 1, 2009**.
- (c) **Scope of Rules.** These rules shall govern all proceedings in civil and criminal actions in this court. No litigant shall be bound by any local rule or standing order which is not passed in accordance with Fed. R. Civ. P. 83 and 28 U.S.C. §§ 2071 and 2077.
- (d) **Relationship to Prior Rules; Actions Pending on Effective Date.** These rules supersede all previous rules promulgated by this court or any judge of this court. They shall govern all applicable proceedings brought in this court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the court the application thereof would not be feasible or would work injustice, in which event the former rules shall govern.
- (e) **Modification or Suspension of Rules.** In individual cases the court, upon its own motion or the motion of any party, may suspend or modify any of these rules if the interests of justice so require.

Committee Comments

In light of the new time calculations coming to the Federal Rules on December 1, 2009, the subcommittee recommends making any amendments contemporaneously, effective as of that date. In addition, the phrase “as amended” was added to paragraph (b) to reflect prior and current amendments.

L.R. 4.3

Payment of Fees by in Forma Pauperis Status

~~An applicant who seeks leave to proceed *in forma pauperis* without prepayment of fees and costs may be required to make a partial payment of filing fees in an amount to be determined by the court. An applicant who is ordered to make a partial fee payment shall have thirty (30) days to show cause why he cannot make the partial fee payment.~~

Committee Comments

The Committee recommends deleting this rule because individual orders are entered in these types of cases addressing the partial payment requirement.

~~L.R.-5.6~~ 5.1

Filing of Documents by Electronic Means

Documents may be filed, signed and verified by electronic means to the extent and in the manner authorized by the CM/ECF User Manual approved by the court. A document filed by electronic means in compliance with this Local Rule constitutes a written paper for the purposes of these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

Committee Comments

The Committee recommends re-ordering the 5 series Local Rules to advance the electronic filing Local Rules for consistency with the Southern District and to give them more prominence. Correspondingly, Local Rule 5.1 which largely deals with paper filing has been re-numbered to 5.4.

~~L.R. 5.7~~ 5.2

Service of Documents by Electronic Means

Documents may be served through the court's transmission facilities by electronic means to the extent and in the manner authorized by the CM/ECF User Manual approved by the court. Transmission of the Notice of Electronic Filing through the court's transmission facilities constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules and either the Fed. R. Civ. P. or the Fed. R. Crim. P.

Committee Comment

The Committee recommends this Local Rule be re-numbered for the reasons set out in the comment concerning Local Rule 5.1.

General Format of Papers Presented for Filing

(a) **Form, Style, and Size of Papers.** In order that the files of the clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the clerk for filing shall be flat and unfolded. All filings shall be on white paper of good quality, 8-½" x 11" in size, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double spaced, except for headings, footnotes and quoted material. The filings shall have no covers or backs. The title of each pleading must be set out on the first page. Each page shall be numbered consecutively. Any paper presented to the clerk for filing which contains four or more exhibits shall include a separate index identifying and briefly describing each exhibit. The court encourages the use of recycled paper.

(b) **Signature.** Every pleading, motion, or other paper shall clearly identify the name, complete address, telephone number, facsimile number (where available) and email address (where available) of the *pro se* litigant or attorney. The original of any pleading, motion or other paper that contains a rubber stamp or facsimile signature shall be deemed unsigned for purposes of Fed. R. Civ. P. 11 and 26(g). Affidavits shall require only the signature of the affiant.

(c) **Number of Copies; Return of File-stamped Copies.** If a party wishes to receive by return mail a file-stamped copy of the pleading, motion, or paper, the party shall include an additional copy to be file-stamped, and a self-addressed envelope of adequate size and with adequate postage.

(d) **Filing with Appropriate Office of the Clerk.** Except for time-sensitive matters, all pleadings, motions, and other papers shall be filed with the office of the clerk for the division in which the case is pending. With respect to time-sensitive matters, a paper may be filed with any office of the clerk, but the party filing the time-sensitive paper must include with the filing an envelope of which is of adequate size, which contains adequate postage, and which is addressed to the office of the clerk in the division in which the case is pending. "Time-sensitive" matters are those in which the rights of a party or other person will be prejudiced if the document is not filed on the date on which it is tendered. All filings must be filed with the clerk of court. The transmission of papers to a judge in any manner for the purpose of filing is prohibited.

(e) **Form of Orders.** The filing of a motion or petition requiring the entry of a routine or uncontested order by the judge or the clerk shall be accompanied by a suitable form of order.

(f) **Form of Notices.** Whenever the clerk is required to give notice, the party or parties requesting such notice shall furnish the clerk with sufficient copies of the notice to be given and the names and addresses of the parties or their counsel to whom such notice is to be given.

(g) **Proof of Service of Papers.** Litigants must be aware that proof or acknowledgment of service is required by several rules including Fed. R. Civ. P. 4, 4.1, and 5(d).

(h) **Notice by Publication.** All notices required to be published in a case shall be delivered by the clerk of the court to the party originating such notice or the party's counsel, who shall have the

responsibility for delivering such notice to the appropriate newspapers for publication.

Committee Comments

The Committee does not recommend any changes to this rule but does recommend re-ordering L.R. 5.1 through 5.7 in light of electronic filing. See the Committee comment's to Local Rule 5.1.

Local Rule 5.1.1

Constitutional Challenge to a Statute – Notice

A notice of constitutional challenge to a statute filed in accordance with Federal Rule of Civil Procedure 5.1 must be filed at the same time the parties tender their proposed case management plan if one is required or within 21 days of the filing drawing into question the constitutionality of a federal or state statute, whichever occurs later. The party filing the notice of constitutional challenge must serve the notice and paper on the Attorney General of the United States and the United States Attorney for the Northern District of Indiana if a federal statute is challenged--or on the Attorney General for the State if a state statute is challenged--either by certified or registered mail or by sending it to an electronic address designated by those officials for this purpose.

Committee Comments

This rule would supplant local rule 24.1 and would, if adopted, conform to the Southern District's proposed Local Rule 5.1.1. The Southern District concluded that the local rule was necessary to clarify the meaning of the word “promptly” in the Federal Rule of Civil Procedure 5.1(a) which implements 28 U.S.C. § 2403. That is, the local rule spells out just how “promptly” the party raising the constitutional challenge must give the required notice. It is also noteworthy that the two government entities most interested in this issue in the Southern District, the U.S. Attorney’s office and the Attorney General of Indiana, both have come out strongly in favor of the proposed local rule.

L.R. 6.1
Extensions of Time

(a) **Initial extension.** In every civil action pending in this court in which a party wishes to obtain an initial extension of time not exceeding **twenty-eight (28)** ~~thirty (30)~~ days within which to file a responsive pleading or a response to a written request for discovery or request for admission, the party shall contact counsel for the opposing party and solicit opposing counsel's agreement to the extension. In the event opposing counsel does not object to the extension or cannot with due diligence be reached, the party requesting the extension shall file a notice with the court reciting the lack of objection to the extension by opposing counsel or the fact that opposing counsel could not with due diligence be reached. No further filings with the court nor action by the court shall be required for the extension. In the event the opposing counsel objects to the request for extension, the party seeking the same shall file with the clerk a formal motion for such extension and shall recite in the motion the effort to obtain agreement. In the absence of the recitation, the court, in its discretion, may reject the formal motion for extension.

(b) **Other extensions.** Any other request for an extension of time, unless made in open court or at a conference, shall be made by written motion. In the event the opposing counsel objects to the request for extension, the party seeking the same shall recite in the motion the effort to obtain agreement; or recite that there is no objection.

(c) **Due dates.** Any notice or motion filed pursuant to this rule shall state the date such response was initially due and the date on which the response will be due pursuant to the request for extension.

Committee Comments

The Committee recommends amending the Rule at paragraph (a) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District.

L.R. 7.1

Motion Practice; Length and Form of Briefs

(a) Unless the court otherwise directs, or as otherwise provided in L.R. 56.1, an adverse party shall have ~~fifteen (15)~~ **fourteen (14)** days after service of a motion in which to serve and file a response, and the moving party shall have seven (7) days after service of a response in which to serve and file a reply. Failure to file a response or reply within the time prescribed may subject the motion to summary ruling. Time shall be computed as provided in Fed. R. Civ. P. 6, and any extensions of time for the filing of a response or reply shall be granted only by order of the assigned or presiding judge or magistrate judge for good cause shown.

(b) Each motion shall be separate; alternative motions filed together shall each be named in the caption on the face. Any motion under Fed. R. Civ. P. 12, motions made pursuant to Fed. R. Civ. P. 37, or for summary judgment pursuant to Fed. R. Civ. P. 56 shall be accompanied by a separate supporting brief.

(c) Any defense raised pursuant to Fed. R. Civ. P. 12 must be briefed in accordance with this rule before the court will deem the defense submitted for ruling.

(d) Except by permission of the court, no brief shall exceed 25 pages in length (exclusive of any pages containing a table of contents, table of authorities, and appendices), and no reply brief shall exceed 15 pages. Permission to file briefs in excess of these page limitations will be granted only upon motion supported by extraordinary and compelling reasons.

Briefs exceeding 25 pages in length (exclusive of any pages containing the table of contents, table of authorities, and appendices) shall contain (a) a table of contents with page references; (b) a statement of issues; and (c) a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited. Each brief shall be plainly written, or typed in the style and format set forth in L.R. 5.1(a). Where the document is typed or printed, (a) the size of the type in the body of the text shall be no less than 12 point, and in footnotes no less than 10 point and (b) the margins, left-hand, right-hand, top and bottom, shall each be 1 inch.

(e) Ordinarily, copies of cited authorities need not be appended to court filings. However, a party citing a decision, statute, or regulation that is not available on Westlaw or Lexis/Nexis shall attach a copy to the document filed with the court. In addition, if a party cites a decision, statute, or regulation that is only available through electronic means (*e.g.* Lexis/Nexis, Westlaw or from the issuing court's website), upon request that party shall promptly furnish a copy to the court and other parties.

Committee Comments

The Committee recommends that the period allowed for filing a response in paragraph (a) be decreased from 15 to 14 days. This change not only comports with the anticipated changes to the time calculation in the federal rules effective December 1, 2009, but also will be consistent with the local rule changes in the Southern District. The Subcommittee in charge of reviewing this rule originally suggested a response deadline of 21 days and 14 days for a reply, but the Committee determined that an extended briefing schedule was not warranted particularly since an additional three days is provided by Federal Rule of Civil Procedure 6(d).

L.R. 7.3

Time for Filing Briefs in Social Security Appeals

In any case seeking review of an agency determination regarding entitlement to Social Security benefits, the following time limits shall apply:

- (a) The person challenging the agency determination shall file an opening brief within ~~forty-five (45)~~ **forty-two (42)** days of the date on which the administrative record is filed.
- (b) The brief in opposition shall be filed within ~~forty-five (45)~~ **forty-two (42)** days of the date on which the opening brief was filed.
- (c) A reply brief may be filed within ~~ten (10)~~ **fourteen (14)** days of the filing of the brief in opposition.

The page limits of L.R. 7.1 shall apply to briefs filed under this rule. No motions for summary judgment need to be filed with this brief.

Committee Comments

The Committee recommends that the period for filing the opening brief and response be decreased to 42 days from 45 days and that the period for filing a reply be increased from 10 days to 14 days. The proposed amendments will ensure that all filings will be made on a weekday; one of the purposes for the recast time calculations effective on December 1, 2009.

L.R. 9.2

Request for Three-Judge Court

(a) In any action or proceeding which a party believes is required to be heard by a three-judge district court, the words “Three-Judge District Court Requested” or the equivalent shall be included immediately following the title of the first pleading in which the cause of action requiring a three-judge court is pleaded. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in a brief statement attached thereto. The words “Three-Judge District Court Requested” or the equivalent on a pleading is a sufficient request under 28 U.S.C. § 2284.

~~(b) In any action or proceeding in which a three-judge court is requested, parties shall file the original and three copies of every pleading, motion, notice, or other document with the clerk until it is determined either that a three-judge court will not be convened or that the three-judge court has been convened and dissolved, and the case remanded to a single judge. The parties may be permitted to file fewer copies by order of the court.~~

Committee Comments

The Committee recommends striking subsection (b) as unnecessary due to the electronic filing requirements.

L.R. 16.1

Pretrial Procedure

(a) **Purpose.** The fundamental purpose of pretrial procedure as provided in Fed. R. Civ. P. 16 is to eliminate issues not genuinely in contest and to facilitate the trial of issues that must be tried. The normal pretrial requirements are set forth in Fed. R. Civ. P. 16. It is anticipated that the requirements will be followed in all respects unless any judge of this court shall vary the requirements and shall so advise counsel. The following provisions shall also apply to the conduct of pretrial conferences by a United States magistrate judge and where applicable, reference to the judge of the court shall include a United States magistrate judge.

(b) **Notice.** In any civil case, the assigned or presiding judge may direct the clerk to issue notice of a pretrial conference, directing the parties to prepare and to appear before the court.

Unless otherwise ordered by the court, the following types of cases will be exempted from the scheduling order requirement of Fed. R. Civ. P. 16(b):

- (1) ~~Social security cases filed under 42 U.S.C. § 405(g);~~ An action for review of an administrative record;
- (2) ~~Applications for writs of habeas corpus under 28 U.S.C. § 2254;~~ A petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;
- (3) ~~Motions to vacate sentence under 28 U.S.C. § 2255;~~ Civil forfeiture cases;
- (5) ~~IRS summons cases and summary proceedings;~~
- ~~(6) Bankruptcy matters;~~
- ~~(7) Land condemnation cases;~~
- (8) ~~Naturalization proceedings filed as civil cases;~~
- (9) (4) ~~Veterans Administration overpayment cases;~~ An action by the United States to recover benefit payments;

~~(10)(5) Student loan cases;~~ An action by the United States to collect on a student loan guaranteed by the United States;

~~(11)(6) Out-of-district subpoena cases;~~ An action to enforce or quash an administrative summons or subpoena;

~~(12)(7) HUD overpayment cases;~~ Mortgage foreclosures in which the United States is a party;

~~(13)(8) Mortgage foreclosures; and~~ A proceeding ancillary to proceedings in another court;

~~(14)(9) Any other case where the judge finds that justice would be served by such exemption.~~ An action to enforce, vacate, or modify an arbitration award.

The above types of cases are not necessarily exempt from the requirements of Fed. R. Civ. P. 26(a)(1) and (f); however, upon written motion of any party, the court may exempt any case in which all plaintiffs or all defendants are proceeding pro se.

(c) ~~**Time.** When an initial pretrial conference is ordered, it will ordinarily be held at the earliest practical date following the joinder of issues or at such earlier time as the court may direct, but in no event later than the latest date permissible under Fed. R. Civ. P. 16.~~

Parties Planning Meeting Report. When an initial pretrial conference is ordered, counsel shall, after conducting a planning meeting under Fed.R.Civ.P. 26(f), complete and file a Report of the Parties' Planning Meeting in accordance with the form found on the Court's website: www.innd.uscourts.gov. The Court may adopt the Report in whole or in part, and may make it part of the Court's scheduling order.

(d) Additional Conferences. Counsel should expect that additional conferences may be set. At any such conference, counsel shall be prepared to address case management plan issues, settlement, trial readiness, and any other matters specifically directed by the Court. Prior to all court conferences, counsel shall confer to prepare for the conference.

~~(d) **Counsel Preparation for Initial Pretrial Conference.** Counsel for the parties, or parties appearing *pro se*, should appear at an initial pretrial conference prepared to express themselves effectively with respect to the following:~~

~~(1) Whether there is a question of jurisdiction over the person or of the subject matter of the action;~~

- ~~_____ (2) Whether all parties, plaintiff and defendant, have been correctly designated and properly served;~~
- ~~_____ (3) Whether a third-party complaint or impleading petition is contemplated;~~
- ~~_____ (4) Whether there is any question of appointment of a guardian ad litem, next friend, administrator, executor, receiver, or trustee;~~
- ~~_____ (5) The time reasonably required for the completion of discovery;~~
- ~~_____ (6) Whether there are pending motions;~~
- ~~_____ (7) Whether a trial by jury has been timely demanded;~~
- ~~_____ (8) Whether a separation of claims, defenses or issues would be desirable; and if so, whether discovery should be limited to the claims, defenses or issues to be tried first.~~
- ~~_____ (9) Whether related actions are pending or contemplated in any court;~~
- ~~_____ (10) The estimated time required for trial; and~~
- ~~_____ (11) Whether there is a probability of disposing of the case through settlement, pretrial adjudication, involuntary dismissal, mediation or alternative dispute resolution methods.~~

~~_____ (e) **Additional Pretrials and Memoranda.** Additional pretrials may be held and briefs, memoranda, or statements required from the parties in the discretion of the judge or magistrate judge handling the case.~~

~~_____ (f) **Pretrial Submissions .** In addition to the disclosures required by Fed. R. Civ. P. 26(a)(3), at such time as directed by the court, each party shall submit the following to the trial judge and each party, unless notified to the contrary:~~

- ~~_____ (1) A trial brief, the nature and extent of which shall be directed by the judge. Copies of all foreign statutes involved, with reference to their source, shall also be submitted.~~

~~(2) In nonjury cases, proposed findings of fact and conclusions of law, including citations for each conclusion of law if available.~~

~~(3) In jury cases, requested charges to the jury covering issues to be litigated. Each charge should cite appropriate authority.~~

~~(4) A stipulation of facts relating to jurisdiction and the merits of the issues.~~

~~(5) A statement of any objections to exhibits listed by other parties. Unless objections to authenticity are noted, copies of exhibits may be introduced in lieu of originals.~~

~~(6) For witnesses disclosed under Fed. R. Civ. P. 26(a)(3)(A), the general subject matter of each witness's testimony.~~

~~(g) **Preparation of Pretrial Entry.** The court may order one of counsel to prepare a pretrial entry setting forth the agreements of counsel reached and the orders of court entered at the pretrial conference. Such entry shall be signed by all counsel. Signature shall affirm that such orders were made but shall not be a waiver of any right to object to such orders.~~

~~(h)~~**(e) Settlement Discussions.** Counsel should anticipate that the subject of settlement will be discussed at any pretrial conference. Accordingly, counsel should be prepared to state his or her client's present position on settlement. Prior to any conference after the initial conference, counsel should have ascertained his or her settlement authority and be prepared to enter into negotiations in good faith. The court may require the parties, an agent of a corporate party, or an agent of an insurance company to appear in person or by telephone for settlement negotiations. Details of such discussions at the pretrial conference should not appear in the pretrial entry.

~~(i)~~**(f) Deadlines.** Deadlines established at the pretrial conference shall not be altered except by agreement of the parties and the court, or for good cause shown.

~~(j)~~**(g) Notification of Settlement or Disposition.** The parties shall immediately notify the court of any reasonably anticipated settlement of a case or the resolution of any pending motion.

~~(k)~~**(h) Sanctions.** Should a party willfully fail to comply with any part of this Rule, the court in its discretion may impose appropriate sanctions. ~~If the court has conducted a settlement conference within 45 days of a scheduled trial date, the court may impose sanctions if a settlement occurs after the settlement conference and that settlement results from a party's unreasonable, vexatious, and substantial change of a settlement posture announced at the settlement conference.~~

Committee Comments

Overall, the Committee looked to update and simplify Local Rule 16.1 by eliminating statutory references, deleting material already addressed in Federal Rule of Civil Procedure 16 (and elsewhere) and conforming the rule to existing practice.

The changes begin with paragraph (b). Rule 16(b)(1) provides that the Court must issue a scheduling order in every case except those “exempted by local rule . . . [.]” The subcommittee noted that the present version of Local Rule 16.1 provides 14 exemptions that while adequate, can probably be more effectively described.

Federal Rule 26(a)(1)(B)(i - viii) provides that certain proceedings are exempt from initial disclosures and Rule 26(f) similarly makes those proceedings exempt from the requirements of any meeting to prepare a discovery plan and the issuance of a report to the court (unless “the court orders otherwise”). The upshot of these exemptions is that because no report is generated under Rule 26(f), no scheduling order is likely to issue. The subcommittee believes that with one exception, this scheme for the management of cases is not only sound, but consistent with current District practice. Accordingly, like the Southern District, the proposed rule incorporates the exemptions listed at Federal Rule 26(a)(1)(B)(i, ii, iv- viii).

The sole exception is the exemption listed at Rule 26(a)(1)(B)(iii), “an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision[.]” At present, the Court always enters scheduling orders involving such *pro se* prisoners, and sometimes even conducts scheduling conferences, often with a proposed schedule offered by the parties. The subcommittee assumes the Court wishes to continue this practice and the flexibility it affords, and therefore has not exempted those cases from either a scheduling order or a scheduling conference. Notably, the Southern District continues to exempt such cases.

The Committee also recommends deleting the exemption language contained at (b)(14) as it seems to run counter to the mandatory language of Rule 16(b)(1) and also suggests, for a similar reason, removal of the somewhat ambiguous language contained within the last paragraph of current paragraph (b).

Overall, the proposed amendments to Local Rule 16.1(b) will give the practitioner a clear and shorter version to consider and one that is likely consistent with other districts.

Paragraph (c) was amended to delete language concerning when pretrial conferences are to be held. The subcommittee does not believe that the present language adds any substance to the local rule, particularly since such conferences are routinely held in a timely fashion. New paragraph (c) on the other hand, adds important language alerting the practitioner of the procedure in non-exempt cases and the expectations they may have concerning their Rule 16(b)(1) report.

New paragraph (d) concerns additional pretrial conferences and is identical to Local Rule 16.1(c) in the Southern District. The provision is consistent with current practice and more expansive than this Court's current paragraph (e) addressing the same topic.

Both paragraphs (d) and (f) of current Rule 16.1, addressing preparation for the initial pretrial conference and pretrial submissions respectively, are shown deleted. Paragraph (d) adds nothing to what is already specified for consideration under Federal Rule 16(c)(2) and similarly, paragraph (f) is either subsumed by Rule 26(a)(3) or the orders each trial judge routinely enters concerning trial.

Paragraph (g) is shown deleted as it is no longer necessary or routinely utilized.

Former paragraphs (h), (i) and (j) are retained in full, but re-lettered to (e), (f) and (g).

Former paragraph (k) is re-lettered to (h). In addition, the last sentence, concerning sanctions for a last-minute, substantial and vexatious change in a settlement position, is deleted. The provision was first added to Local Rule 16.1 in 1994 as an adjunct to Local Rule 47.3 (concerning the taxation of juror costs) but apparently never (or rarely, if ever) used. The provision has likely been largely forgotten because it can only be used under the narrowest of circumstances. Accordingly, the subcommittee recommends deletion of this provision. With the deletion of the sanctioning provision, the Court's new (h) will be identical to the Southern District's Local Rule 16.1(f), except that sanctions in the Northern District can only be imposed if a party "willfully" fails to comply with any part of the Rule. The Southern District does not impose that additional term. The Committee believes the term clarifies the basis for sanctions and therefore recommends its retention.

L.R. 16.6

Alternative Dispute Resolution

(a) The court may order mediation or early neutral evaluation in any civil case.

(b) Except for cases exempted by L.R. 16.1, the parties shall consider as part of every Fed. R. Civ. P. 26(f) report the use of one of the following Alternative Dispute Resolution Processes:

(1) Mediation;

(2) Early Neutral Evaluation;

(3) Mini-trial;

(4) Any other process upon which the parties may agree.

The parties shall report to the court which, if any, of the processes they wish to employ and when the process will be undertaken. A settlement conference conducted by a judicial officer is not an Alternative Dispute Resolution Process.

(c) Unless otherwise ordered by the court, the Indiana Rules for Alternative Dispute Resolution, including those rules regarding privilege, confidentiality of communications, and disqualification of neutrals, shall apply to all Alternative Dispute Resolution Processes.

(d) To the extent permitted under applicable law, each Mediator shall have immunity in the performance of his or her duties under these Rules, in the same manner, and to the same extent, as would a duly appointed Judge.

~~(d)~~(e) A roster of available neutrals shall be maintained in the offices of the clerk and shall be made available to counsel and the public upon request.

Committee Comments

The Committee considered adopting the Southern District's extensive rules of alternate dispute resolution but determined that with the exception of the immunity provision currently shown red-lined in new subsection (d) – the Southern District's 1.3 – no changes were necessary. With the addition of a new paragraph (d), the former (d) will be re-lettered (e).

L.R. 24.1

Procedure for Notification of Any Claim of Unconstitutionality

- ~~(a) Whenever the constitutionality of any act of Congress affecting the public interest is or is intended to be drawn into question in any suit or proceeding to which the United States, or an officer, agency or employee thereof, is not a party, counsel for the party raising or intending to raise such constitutional issue shall immediately file a "Notice of Claim of Unconstitutionality" with the Court, specifying the act or the provisions thereof which are attacked, with a proper reference to the title and section of the United States Code if the act is included therein.~~
- ~~(b) In any action, suit, or proceeding in which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the party raising the constitutional issue shall immediately file a "Notice of Claim of Unconstitutionality" with the Court specifying the act or the provisions thereof which are attacked, with a proper reference to the title and section of the Indiana Code if the act is included therein.~~
- ~~(c) The party giving notice of a challenge to the constitutionality of a statute under subsection (a) or (b) shall also move the court to certify the question to the Attorney General of the United States and the United States Attorney in the case of an act of Congress; or to the Attorney General of the state in the case of a state statute, as required by 28 U.S. C. § 2403. In the case of an act of Congress, a copy of the motion and notice shall be served upon the Attorney General of the state. The pertinent attorney general shall not be served with a summons or made a party to the action unless intervention is sought. The moving party shall tender a form of order and include on the distribution list the pertinent attorney general, and in the case of an act of Congress, the United States Attorney, with sufficient copies for service. An order granting certification shall provide a set time within which the attorney general may seek to intervene, and the Clerk shall serve a copy of the order upon the attorney general, and in the case of an act of Congress, the United States Attorney.~~
- ~~(d) Failure to comply with this rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in statute or the Fed. R. Civ. P.~~

Committee Comments

This rule should be abandoned in favor of new local rule 5.1.1., for the reasons set out in the Committee Comments in connection with that rule.

L.R. 40.1
Assignment of Cases

(a) The caseload of the court shall be distributed among the judges and magistrate judges as provided by order of the court. All cases, as they are filed, shall be assigned to appropriate judicial officers in accordance with the method prescribed by the court from time to time.

(b) No clerk, deputy clerk, or other employee in the clerk's office shall reveal to any person, other than the judges, the order of assignment of cases until after they have been filed and assigned or assign any case otherwise than as herein provided or as ordered by the district court.

(c) No person shall directly or indirectly cause or procure or attempt to cause or procure any clerk, deputy clerk or other court attache to reveal to any person, other than the judges of the court, the order of assignment of cases until after they have been filed or assigned as provided above. No person shall directly or indirectly cause or procure or attempt to cause or procure any clerk, deputy clerk or other court attache to assign any case otherwise than as herein provided or as ordered by the district court. Any person violating this subparagraph may be punished for contempt of court.

(d) At the time of filing and at any time thereafter when it becomes known, counsel shall file a notice of related action when it appears that any case:

(1) grows out of the same transaction or occurrence,

(2) involves the same property, or

(3) involves the validity or infringement of a patent, trademark or copyright
as is involved in a pending case.

(e) Related cases shall be transferred from one judge to another judge, or from one magistrate judge to another magistrate judge, when it is determined that a later numbered case is related to a pending, earlier numbered case assigned to another judge or magistrate judge.

(f) When required by considerations of workload, in the interest of the expeditious administration of justice, the court by order may reassign cases among the judges or magistrate judges.

(g) If for any reason it should become necessary for a judge, to be disqualified from a civil case assigned to that judge, the case shall be reassigned to another judge within the district on a random basis.

(h) If for any reason it should be necessary for a judge, in a division of this court where more than one judge is in residence, to be disqualified from a criminal case assigned to that judge, the case shall be reassigned to another judge resident in that division on a random basis. If there is a need of recusal by a judge in a division where fewer than two judges are in residence, or if all judges in a division are disqualified, the case shall be transferred to the chief judge of the district for reassignment to another judge within the district. If the chief judge is disqualified from deciding a case from which another judge has been disqualified, the case shall be sent for reassignment to the judge who is next senior in service on the bench and who is not also disqualified.

(i) If for any reason it should become necessary for a magistrate judge to be disqualified from a case consented to under Title 28 U.S.C. Section 636(c)(1), the case should return to the originally assigned district judge for reassignment to another magistrate judge within the district.

(j) Unless the remand order directs otherwise, following the docketing of a mandate for a new trial pursuant to Seventh Circuit Rule 36 and allowing **fourteen (14)** ~~fifteen (15)~~ days thereafter within which all parties may file their request that the judge previously assigned to the case retry the case, the case shall be reassigned in accordance with paragraphs (g), (h), or (i).

Committee Comments

The Committee recommends amending the Rule at paragraph (j) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District.

L.R. 40.4

Division of Business Among District Judges

~~—— (a) — This district has three divisions: Fort Wayne, South Bend, and Hammond. Judges may be assigned to a division of this court, permanently and for trial sessions, as the court may from time to time order. Judges assigned to such trial sessions shall have the authority to conduct trials and evidentiary hearings in all pending cases during the trial session in the same manner as though the cases were assigned to him or her.~~

(a) Cases shall be assigned to district judges pursuant to a general order issued by the court or by the chief judge when an assigned district judge is unable to handle the case. The assignment of cases may be made without regard to the division in which the district judge normally sits.

~~—— (b) — Divisions of this court to which one or more judges have been permanently assigned shall be in continuous session.~~

(b) If a matter requires expedited consideration, and the assigned **district** judge is unavailable, then the other district judge within that division shall consider the matter. If no district judge is available in that division, then the clerk shall notify the chief judge. If the chief judge is also unavailable, the clerk shall notify the next most senior judge who is available.

Committee Comments

The Committee recommends deletion of paragraphs (a) and (b) for two reasons: first, the terms "trial sessions" and "continuous session" are archaic; second, paragraph (a) does not reflect the current policy of random assignment of civil cases. The Committee rejected the Southern District's provision for the designation of a "motions judge" as contrary to this Court's procedure.

L.R. 41.1

Dismissal of Actions for Failure to Prosecute

Civil cases in which no action has been taken for a period of six (6) months may be dismissed for want of prosecution with judgment for costs after **twenty-eight (28)** days notice given by the clerk **or the assigned judge** to the attorneys of record (or, in the case of a *pro se* party, to the party) unless, for good cause shown, the court orders otherwise.

Committee Comments

This change is recommended to comply with the Southern District's Rule 41.1 and current practice where either the clerk or the judge issues the show cause notice. The 30 days notice provision was also amended to 28 days for consistency with the Southern District.

L.R. 42.2

Consolidation of Cases

A motion to consolidate two or more civil cases pending upon the docket of the Court shall be filed in the case bearing the earliest docket number. That motion shall be ruled upon by the Judge to whom that case is assigned. In each case to which the consolidation motion applies, a copy of the moving papers shall be served upon all parties and a notice of consolidation motion shall be filed.

Committee Comments

The Northern District does not have a Local Rule 42.2 dealing with consolidation of cases. The Committee recommends that the Northern District adopt the Southern District's version.

L.R. 47.2

Communication with Jurors

No attorney or party appearing in this court, or any of their agents or employees, shall approach, interview, or communicate with any member of the jury except on leave of court granted upon notice to opposing counsel ~~and upon good cause shown~~. This rule applies to any communication before trial with members of the venire from which the jury will be selected, as well as any communication with members of the jury during trial, during deliberations, or after return of a verdict. Any juror contact permitted by the court shall be subject to the control of the judge.

Committee Comments

In order to grant more discretion to the assigned judge, the committee recommends that the requirement of good cause be eliminated.

L.R. 51.1

Instructions in Civil Cases

In all civil cases to be tried to a jury, and subject to the requirements of any controlling pretrial order, parties shall use pattern jury instructions whenever possible, ~~and are encouraged to submit an additional copy of the instructions in a format compatible with the word processing program of the court.~~

Committee Comments

Because of electronic filing, the Committee deleted obsolete language concerning additional copies.

L.R. 56.1

Summary Judgment Procedure

(a) In the text of the supporting brief or an appendix thereto, filed in support of a motion for summary judgment pursuant to L.R. 7.1, there shall be a “Statement of Material Facts,” supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence, as to which the moving party contends there is no genuine issue. Any party opposing the motion shall, within ~~thirty (30)~~ **twenty-eight (28)** days from the date such motion is served upon it, serve and file any affidavits or other documentary material controverting the movant's position, together with a response that shall include in its text or appendix thereto a “Statement of Genuine Issues” setting forth, with appropriate citations to discovery responses, affidavits, depositions, or other admissible evidence, all material facts as to which it is contended there exists a genuine issue necessary to be litigated. Any reply shall be filed within ~~fifteen (15)~~ **fourteen (14)** days from the date the response is served.

(b) In determining the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the “Statement of Genuine Issues” filed in opposition to the motion, as supported by the depositions, discovery responses, affidavits and other admissible evidence on file.

(c) All motions for summary judgment shall be considered as submitted for ruling without oral argument or hearing unless a request for such is granted under L.R. 7.5 or the court otherwise directs.

(d) Any dispute regarding the admissibility of evidence should be addressed in a separate motion in accordance with L.R. 7.1.

(e) If a party is proceeding pro se and an opposing party files a motion for summary judgment, counsel for the moving party must serve a notice upon the unrepresented party as set forth in Appendix C.

Committee Comments

The Committee does not recommend any changes to this Local Rule apart from establishing 28 days for a response to any motion for summary judgment and 14 days for a reply. This change responds to the new time calculation in the federal rules effective December 1, 2009. Although amended Rule 56 (effective December 1, 2009) grants a party 21 days to respond to a motion for summary judgment, that deadline can be modified by local rule, and 28 days for a response is not only consistent with the new time computation requirements, but also a near approximation of the current 30 days.

The Committee recommends that the Northern District, unlike the Southern District, retain the

requirement of a separate motion to strike as set out in Local Rule 56.1(d).

Paragraph (e) discusses notice to *pro se* litigants and refers to Appendix C. The Southern District's Local Rule 56.1(h) has the requirements of notice to a *pro se* litigant within the rule. The Committee recommends that the Northern District retain its reference to Appendix C. However, the Committee recommends some changes to Appendix C, which are noted there. In particular, Appendix C is amended to provide *pro se* litigants with the same response deadline, 28 days, as any other litigant and was also modified to extensively quote the new language of Rule 56.

L.R. 66.1

Receiverships

(a) **Proceedings to Which This Rule is Applicable.** This rule is promulgated, pursuant to Fed. R. Civ. P. 66 for the administration of estates, other than the estates in bankruptcy, by receivers or by other officers appointed by the court.

(b) **Inventory and Appraisal.** Unless the court otherwise orders, a receiver or similar officer, as soon as practicable after appointment and not later than **twenty-eight (28)** ~~thirty (30)~~ days after he or she has taken possession of the estate, shall file an inventory and an appraisal of all the property and assets in the receiver's possession or in the possession of others who hold possession as his or her agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

(c) **Periodic Reports.** Within **twenty-eight (28)** ~~thirty (30)~~ days after the filing of inventory, and at regular intervals of three (3) months thereafter until discharged, unless the court otherwise directs, the receiver or other similar officer shall file reports of the receipts and expenditures and of his or her acts and transactions in an official capacity.

(d) **Compensation of Receiver, Attorneys and Other Officers.** In the exercise of its discretion, the court shall determine and fix the compensation of receivers or similar officers and their counsel and the compensation of all others who may have been appointed by the court to aid in the administration of the estate, and such allowances or compensation shall be made only on petition therefore and on such notice, if any, to creditors, and other interested persons as the court may direct.

(e) **Administration Generally.** In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the court.

Committee Comments

The Committee recommends amending the Rule at paragraphs (b) and (c) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District.

~~L.R. 67.1~~

Deposits

~~———— (a) ——— **Deposit into Registry Account and Other Interest-bearing Accounts.** All funds deposited into the court pursuant to Fed. R. Civ. P. 67 and 28 U.S.C. § 2041 shall be deposited into an interest-bearing Registry Account maintained by the clerk. The Order of Deposit should direct the clerk, without further order of the court, to deduct from the income earned on the investment a fee not exceeding the fee authorized from time to time by the Judicial Conference of the United States, as soon as such fee becomes available for deduction from the investment income.~~

~~———— (b) ——— **Orders Directing Investments of Funds by clerk of court.** A party may petition the court for an Order of Investment which directs the clerk to hold the funds in a form of interest-bearing account other than the Registry Account. Whenever a party seeks a court order for money to be invested by the clerk into an interest-bearing account, the party shall personally deliver a proposed order to the clerk, who will inspect the order for proper form, content, and compliance with this rule. A model proposed order is available from the clerk or on the court's website. The clerk shall immediately forward the proposed order to the judge for whom the order was prepared.~~

~~———— Any order which, pursuant to 28 U.S.C. § 2041, directs the clerk to invest funds in an interest-bearing account or instrument shall include the following:~~

- ~~———— (1) ——— The amount to be invested;~~
- ~~———— (2) ——— The name of the financial institution in which the money will be invested;~~
- ~~———— (3) ——— The type of instrument or account;~~
- ~~———— (4) ——— The term of the investment; and~~
- ~~———— (5) ——— If the deposit and/or interest received during the time of investment will exceed the FDIC Insurance amount, then the petitioning party shall obtain a collateral pledge by the financial institution for the remainder of the investment. The collateral pledge shall be approved by the judge.~~

Committee Comments

The Committee recommends that Local Rule 67.1 be deleted for three reasons. First, the procedures outlined in the local rule are covered by statute and Rule 67. Second, the order entered approving the deposit generally instructs the clerk whether the money should be kept in an interest bearing account. Third, there is no comparable rule in the Southern District.

~~L.R. 69.2~~

~~Discovery in Aid of Judgment or Execution~~

~~———— An order to answer interrogatories shall accompany each set of interrogatories served on a garnishee defendant and may be part of the same document or pleading. As a minimum, the order to answer interrogatories shall contain the following information:~~

- ~~———— (1) ——— that the plaintiff has a judgment against the defendant and the amount of the judgment;~~
- ~~———— (2) ——— that the garnishee defendant may answer the interrogatories in writing on or before the date specified or appear in court and answer the interrogatories in person, at the garnishee's option;~~
- ~~———— (3) ——— the time, date and place of the hearing; and~~
- ~~———— (4) ——— that any claim or defense to a proceedings supplemental or garnishment order to a garnishee defendant must be presented at the time and place of the hearing specified in the order to appear.~~

~~———— A copy of the motion for proceedings supplemental must be served on the garnishee defendant at the time the order to answer interrogatories and the interrogatories are served upon the garnishee defendant.~~

~~———— Further, if the order to answer interrogatories is to operate as a hold on a judgment defendant's depository account, the order shall comply with the applicable provisions of the Indiana Code.~~

~~———— To the extent that they are inconsistent with the Federal Debt Collection Act, the foregoing provisions shall not apply in Federal Debt Collection Act cases.~~

Committee Comments

Rule 69 of the Federal Rules of Civil Procedure provides that state procedures apply. Both Local Rule 69.2 and Rule 69.3, replicate state procedures as found in the Indiana Trial Rules. Because these rules do not add to the existing state rules and merely replicate them, the Committee recommends deletion of both rules.

~~L.R. 69.3~~

~~Final Orders in Wage Garnishment~~

~~———— All final orders garnishing wages shall comply with the applicable provisions of the Indiana Code, and shall take effect after all prior orders in garnishment have been satisfied, and only one wage garnishment will be carried out by the garnishee defendant at a time. Garnishment orders obtained under the Federal Debt Collection Act shall comply with the provisions of that Act.~~

Committee Comments

Rule 69 of the Federal Rules of Civil Procedure provides that state procedures apply. Both Local Rule 69.2 and Rule 69.3, replicate state procedures as found in the Indiana Trial Rules. Because these rules do not add to the existing state rules and merely replicate them, the Committee recommends deletion of both rules.

L.R. 72.1

Authority of United States Magistrate Judges

(a) The term “United States Magistrate Judge” shall include full-time magistrate judges, part-time magistrate judges and magistrate judges recalled pursuant to 28 U.S.C. §636(h).

(b) Magistrate judges of this district are judicial officers of the Court and are authorized and specially designated to perform all duties authorized to be performed by United States magistrate judges by the United States Code and any rule governing proceedings in this Court.

(c) The cases in which each magistrate judge is authorized to perform the duties enumerated in these rules are those cases assigned to the magistrate judge by rule or order of this Court, or by order or special designation of any district judge of this Court.

Committee Comments

This proposed revision marks a significant departure from the Local Rule 72.1 in effect in this District for more than twenty-five years. When magistrates (as they were then called) first came into existence, the extent of their jurisdiction was somewhat in question. Accordingly, this District, along with others (*e.g.*, Southern District of Indiana; Eastern District of Wisconsin) drafted Local Rules that were a comprehensive recitation of nearly all possible proceedings that could involve magistrates. The result, at least in this District, was a lengthy rule spanning more than nine pages.

The intervening years, however, have witnessed an evolutionary and expansive approach to magistrate judge duties, as well as additional statutory and procedural clarity. Indeed, the involvement of magistrate judges has become so common and accepted that it is exceedingly rare to have the scope of their authority challenged. Accordingly, many districts have jettisoned a “laundry list” approach to Magistrate Judge duties in favor of a simple local rule granting them authority co-extensive with the reach of the United States Code. The subcommittee reviewed a number of such local rules and settled on the rule currently in effect in the Eastern District of Virginia as the most suitable.

New paragraph (a) is drawn from the Eastern District of Virginia, but also largely tracks (except for the deletion of the needless phrase: “[u]nless otherwise provided in these Rules,”) this District’s Local Rule 72.1(a).

New paragraph (b) is lifted wholesale from the Eastern District of Virginia’s Local Rule 72.1 and because of its comprehensive wording, essentially supplants nearly all of this District’s existing Local Rule 72.1. The subcommittee, the District’s Magistrate Judges, believe that the proposed change is consistent with current District practice.

New paragraph (c) not only follows the language from the Eastern District of Virginia, but also is word-for-word recitation of this District's Local Rule 72.1(j). The two versions of Local Rule 72.1 are otherwise too difficult to reconcile and accordingly the current version of Local Rule 72.1 should be stricken.

The Committee believes these changes will ultimately assist the practicing bar and the public in understanding the modern role of the magistrate judge in federal litigation.

L.R. 72.1 (Former)

Authority Of United States Magistrate Judges

~~Unless otherwise provided in these Rules, the term "United States Magistrate Judge" shall include full-time magistrate judges, part-time magistrate judges and magistrate judges recalled pursuant to 28 U.S.C. § 636(h).~~

~~(a) **Duties under 28 U.S.C. §§ 636(a)(1) and (2).** Each United States magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. §§ 636(a)(1) and (2), and may exercise all the powers and duties conferred upon United States magistrate judges by statutes of the United States and the Federal Rules of Criminal Procedure which include, but are not limited to, the following:~~

- ~~(1) Acceptance of criminal complaints and issuance of arrest warrants or summonses. (Fed. R. Crim. P. 4.)~~
- ~~(2) Issuance of search warrants, including warrants based upon oral or telephonic testimony. (Fed. R. Crim. P. 41.)~~
- ~~(3) Conduct of initial appearance proceedings for defendants, informing them of the charges against them and of their rights, and imposing conditions of release. (Fed. R. Crim. P. 5.)~~
- ~~(4) Conduct of initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency. (18 U.S.C. § 5034.)~~
- ~~(5) Appointment of attorneys for defendants who are unable to afford or obtain counsel and approval of attorneys' expense vouchers in appropriate cases. (18 U.S.C. § 3006A.)~~

- ~~(6) Appointment of counsel for persons subject to revocation of probation, parole or supervised release (in which case preference shall be given to previously appointed counsel if such attorney is still available and willing to serve); persons in custody as a material witness; persons seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 or 18 U.S.C. § 4245; or for any person for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which the person faces loss of liberty, any federal law requires the appointment of counsel.~~
- ~~(7) Appointment of interpreters in cases initiated by the United States. (28 U.S.C. §§ 1827 and 1828.)~~
- ~~(8) Direction of the payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required court appearances. (18 U.S.C. § 4285.)~~
- ~~(9) Setting of bail for material witnesses. (18 U.S.C. § 3149.)~~
- ~~(10) Conduct of preliminary examinations. (Fed. R. Crim. P. 5.1 and 18 U.S.C. § 3060.)~~
- ~~(11) Conduct of initial proceedings for defendants charged with criminal offenses in other districts. (Fed. R. Crim. P. 40.)~~
- ~~(12) Conduct of detention hearings. (18 U.S.C. § 3142(f).)~~
- ~~(13) Conduct of preliminary hearings for the purpose of determining whether there is probable cause to hold a probationer for a revocation hearing. (Fed. R. Crim. P. 32.1(a)(1).)~~
- ~~(14) Administration of oaths and taking of bail, acknowledgements, affidavits and depositions. (28 U.S.C. § 636(a)(2).)~~
- ~~(15) Conduct of extradition proceedings. (18 U.S.C. § 3184.)~~
- ~~(16) Holding of individuals for security of the peace and for good behavior. (50 U.S.C. § 23.)~~
- ~~(17) Discharge of indigent prisoners or persons imprisoned for debt under process of execution issued by a federal court. (28 U.S.C. § 2007.)~~

~~————— (18) Issuance of attachments or orders to enforce obedience of Internal Revenue Service summonses to produce records or give testimony. (26 U.S.C. § 7604(b).)~~

~~————— (19) Issuance of administrative inspection warrants. (*In the Matter of Establishment Inspection of Gilbert and Bennett Manufacturing Co.*, 589 F.2d 1335, 1340-41 [7th Cir. 1979].)~~

~~————— (20) Institution of proceedings against persons violating certain civil rights statutes. (42 U.S.C. § 1987.)~~

~~————— (21) Settling or certification of the non-payment of seamen's wages.~~

~~————— (22) Enforcement of awards of foreign consuls in differences between captains and crews of vessels of the consul's nation. (22 U.S.C. § 258.)~~

~~————— (23) Conduct of proceedings under the Federal Debt Collection Act to the extent not inconsistent with the Constitution and laws of the United States. (28 U.S.C. § 3008.)~~

~~————— (b) **Disposition of Misdemeanor Cases — 18 U.S.C. § 3401.** A magistrate judge may:~~

~~————— (1) Conduct the trial of persons accused of, and sentence persons convicted of, misdemeanors, including petty offenses committed within this district. Pursuant to 18 U.S.C. § 3401(a), each magistrate judge is hereby specially designated to exercise the jurisdiction conferred by such section with the written consent of the defendant as provided in 18 U.S.C. § 3401(b); such trial shall be by jury in the case of all Class A misdemeanors unless waived in writing by the defendant;~~

~~————— (2) Direct the probation service of the court to conduct a pre-sentence investigation in any misdemeanor case.~~

~~————— Any appeal from the judgment of the magistrate judge shall be as provided in 18 U.S.C. § 3402.~~

~~————— (c) **Determination of Non-Dispositive Pre-trial Matters — 28 U.S.C. § 636(b)(1)(A).** A magistrate judge may hear and determine any procedural or discovery motion or other motion or pre-trial matter in a civil or criminal case, other than the motions which are specified in Local Rule 72.1(d) of these rules, in accordance with Fed. R. Civ. P. 72(a).~~

~~—————~~

~~(d) Recommendation Regarding Case-Dispositive Motions -- 28 U.S.C. § 636(b)(1)(B).~~

~~(1) A magistrate judge may submit to a district judge of the court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pre-trial motions in civil and criminal cases in accordance with Fed. R. Civ. P. 72(b):~~

~~(A) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;~~

~~(B) Motions for judgment on the pleadings;~~

~~(C) Motions for summary judgment;~~

~~(D) Motions to dismiss or permit the maintenance of a class action;~~

~~(E) Motions under Fed. R. Civ. P. 72(a);~~

~~(F) Motions to involuntarily dismiss an action;~~

~~(G) Motions for review of default judgments;~~

~~(H) Motions to dismiss or quash an indictment or information made by a defendant;~~

~~(I) Motions to suppress evidence in a criminal case;~~

~~(J) Applications for post-trial relief made by individuals convicted of criminal offenses;~~

~~(K) Petitions for judicial review of administrative decisions regarding the granting of benefits to claimants under the Social Security Act, and related statutes;~~

~~(L) Petitions for judicial review of an administrative award or denial of licenses or similar privileges;~~

~~(M) Any matter that may dispose of a charge or defense in a criminal case.~~

~~(2) A magistrate judge may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.~~

~~(e) Prisoner Cases under 28 U.S.C. § 2254 and 2255. A magistrate judge may perform any or all the duties imposed upon a judge by the rules governing proceedings in the United States District Court under §§ 2254 and 2255 of Title 28, United States Code. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge. In the event~~

~~no hearing is held by the magistrate judge, the magistrate judge may, pursuant to 28 U.S.C. § 636(b)(3) acting as legal advisor to the district judge, submit to the judge a proposed entry ruling on the motion. If the district judge so directs, copies of such proposed ruling need not be served on the parties of counsel.~~

~~————— (f) ——— **Prisoner Cases under 42 U.S.C. § 1983.** A magistrate judge may:~~

~~————— (1) ——— Review prisoner suits for deprivation of civil rights arising out of conditions of confinement under § 1983 of Title 42, United States Code and issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of the suits by the district judge. Any order disposing of prisoner suits challenging the conditions of their confinement may only be made by a district judge.~~

~~————— (2) ——— Take on-site depositions, gather evidence, conduct pretrial conferences, or serve as a mediator at a holding facility in connection with civil rights suits filed by prisoners contesting conditions of confinement under § 1983 of Title 42, United States Code.~~

~~————— (3) ——— Conduct periodic reviews of proceedings to ensure compliance with previous orders of the court regarding conditions of confinement.~~

~~————— (4) ——— Review prisoner correspondence.~~

~~————— (g) ——— **Special Master References — 28 U.S.C. § 636(b)(2).** A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53(b).~~

~~————— (h) ——— **Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties — 28 U.S.C. § 636(e).** Upon the consent of the parties, a full-time magistrate judge is hereby authorized and specially designated to conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Pursuant to 28 U.S.C. § 636(c)(1), upon the consent of the parties, pursuant to their specific written request, and upon certification by the chief judge of this court that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit, any part-time magistrate judge who does not serve as a full-time judicial officer but who meets the bar requirements set forth in 28 U.S.C. § 631(b)(1), is hereby authorized and specifically designated by this court to conduct any or all proceedings in a civil case, whether jury or non-jury. In the course of conducting such proceedings, upon consent of the parties, a magistrate judge may hear and~~

determine any and all pre-trial and post-trial motions which are filed by the parties, including case-dispositive motions.

~~(i) Additional Duties -- 28 U.S.C. § 636(b)(3).~~ A magistrate judge of this court is also authorized to:

- ~~(1) Exercise general supervision of civil and criminal calendars, including the handling of calendar and status calls, and motions to expedite or postpone the trial of cases for the district judges;~~
- ~~(2) Conduct preliminary and final pre-trial conferences, status calls, settlement conferences, and related pre-trial proceedings in civil cases, and prepare a pre-trial order following the conclusion of the final pre-trial conference;~~
- ~~(3) Conduct pre-trial conferences, omnibus hearings, and related pre-trial proceedings in criminal cases;~~
- ~~(4) Conduct arraignments, accept not guilty pleas, and order pre-sentence reports on defendants who signify the desire to plead guilty. (A magistrate judge, however, may not accept pleas of guilty or *nolo contendere* in cases outside the jurisdiction specified in 18 U.S.C. § 3401);~~
- ~~(5) Receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);~~
- ~~(6) Accept waivers of indictment, pursuant to Fed. R. Crim. P. 7(b);~~
- ~~(7) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;~~
- ~~(8) Hear and determine motions by the government to dismiss an indictment, information, or complaint without prejudice to further proceedings;~~
- ~~(9) Conduct voir dire and select petit juries in civil cases for the court;~~
- ~~(10) Accept petit jury verdicts in civil cases in the absence or unavailability of a judge;~~

- ~~————— (11) Order the exoneration or forfeiture of bonds;~~
- ~~————— (12) Conduct proceedings for the collection of civil penalties of not more than \$200.00 assessed under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§ 4311(d), 12309;~~
- ~~————— (13) Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;~~
- ~~————— (14) Serve as eminent domain commissioner as provided in Fed. R. Civ. P. 71.1;~~
- ~~————— (15) Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;~~
- ~~————— (16) Serve as a member of this District's Speedy Trial Act Planning Group, including service as the reporter (18 U.S.C. § 3168);~~
- ~~————— (17) Supervise proceedings on requests for letters rogatory in civil and criminal cases upon special designation by the district court as required under 28 U.S.C. § 1782(a);~~
- ~~————— (18) Hear and determine applications for admission to practice before this District Court;~~
- ~~————— (19) Preside over naturalization ceremonies and administer the oath of renunciation and allegiance required by 8 U.S.C. § 1448(a);~~
- ~~————— (20) Conduct proceedings supplemental; and~~
- ~~————— (21) Perform any additional duty as is not contrary to the law of this District and Circuit nor inconsistent with the Constitution and laws of the United States.~~

~~————— (j) **Assignment of Matters to Magistrate Judge.** The cases in which each magistrate judge is authorized to perform the duties enumerated in these rules are those cases assigned to the magistrate judge by rule or order of this court, or by order or special designation of any district judge of this court.~~

L.R. 79.1

Custody of Files and Exhibits

(a) **Custody During Pendency of Action.** After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried in this court shall be placed in the custody of the clerk, unless otherwise ordered by the court, and shall not be withdrawn until after the time for appeal has run or the case is disposed of otherwise. Such items shall not be withdrawn until the final mandate of the reviewing court is filed in the office of the clerk and until the case is disposed of as to all issues, unless otherwise ordered.

(b) **Removal After Disposition of Action.** Subject to the provisions of subsections (a) and (d) hereof, unless otherwise ordered, all models, diagrams, exhibits or material placed in the custody of the clerk shall be removed from the clerk's office by the party offering them in evidence within ninety (90) days after the case is decided. In all cases in which an appeal is taken these items shall be removed within ~~thirty (30)~~ **twenty-eight (28)** days after the mandate of the reviewing court is filed in the clerk's office and the case is disposed of as to all issues, unless otherwise ordered. At the time of removal a detailed receipt shall be given to the clerk and filed in the cause. No motion or order is required as a prerequisite to the removal of an exhibit pursuant to this rule.

(c) **Neglect to Remove.** Unless otherwise ordered by the court, if the parties or their attorneys shall neglect to remove models, diagrams, exhibits or material within ~~thirty (30)~~ **twenty-eight (28)** days after notice from the clerk, the same shall be sold by the United States Marshal at public or private sale or otherwise disposed of as the court may direct. If sold, the proceeds, less the expense of sale, shall be paid into the registry of the court.

(d) **Contraband Exhibits.** Contraband exhibits, such as controlled substances, money, and weapons, shall be released to the investigative agency at the conclusion of the trial and not placed in the custody of the clerk. A receipt shall be issued when such contraband exhibits are released.

(e) **Withdrawal of Original Records and Papers.** Except as provided above with respect to the disposition of models and exhibits, no person shall withdraw any original pleading, paper, record, model or exhibit from the custody of the clerk or other officer of the court having custody thereof except upon order of a judge of this court.

Committee Comments

The Committee recommends amending the Rule at paragraphs (b) and (c) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District.

L.R. 83.3
Courtroom and Courthouse
Broadcasting, Publicity and Cell Phone Use

(a) **Photography and Broadcasting.** The following Resolution of the Judicial Conference adopted at its March 1979 meeting shall be effective in the courthouses of this district:

“RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.”

- (1) In the Northern District of Indiana the term “environs” means all areas upon the same floor of the building on which a courtroom, jury assembly room, grand jury room or clerk’s office is located.
- (2) The taking of photographs, sound recording (except by the official court reporters in the performance of their duties), broadcasting by radio, television, telephone, or other means, in connection with any judicial proceeding in any environs as defined above are prohibited. Provided, however, that incidental to investiture, ceremonial or naturalization proceedings, a judge of this court may permit the taking of photographs, broadcasting, televising, or recording. Provided further, nothing in this Rule shall prohibit the U.S. Attorney from conducting a press conference **or depositions** within its office space.
- (3) **Depositions recorded by whatever means may be taken in the environs of the court upon approval by a judge or the clerk of this court.**

(b) **Cellular Telephones and PDA’s.**

- (1) Members of the Bar of this Court may bring into the courthouses in this district cellular telephones and personal digital assistants (PDA’s).
- (2) Building personnel and federal law enforcement officers may have cellular telephones in the district courthouses subject to the following:

- (A) Building personnel shall not be allowed to bring cellular telephones into any courtroom in this district.
 - (B) The United States Marshal and all Deputy Marshals shall be allowed to bring cellular telephones into the courtrooms, provided the cellular telephones are switched to a vibrate (rather than an audible) mode prior to entry.
 - (C) Visiting federal law enforcement personnel who have been approved by the United States Marshal's Service to carry cellular telephones are authorized to carry them directly to and from the agency office they are visiting, but must deposit them there for the duration of their visit.
- (c) All persons authorized by this Rule to bring cellular telephones or PDA's into the courthouse are strictly prohibited from using such devices for any improper purpose, including but not limited to the taking of any photographs or moving pictures. Furthermore, all such persons shall be subject to a fine of up to \$1,500 and/or confiscation of the cellular telephone or PDA if that device creates an audible noise in the courtroom of this district while the court is in session, which penalty is at the discretion of the judicial officer before whom the device creates the audible noise.

Committee Comments

This rule new Local Rule 83.3 best combines Local Rule 83.3, 83.4, and the General Order 2008-7, without changing their content. In the interest of clarity, the present version of Local Rules 83.3 and 83.4 are shown deleted.

In addition, the Committee amended the rule further to clarify that the U.S. Attorney can conduct depositions in its office (even if technically within the environs of the Court) and that any deposition can be taken within the environs of the Court if approved by a judicial officer or the Clerk.

~~L.R. 83.3~~

~~Courtroom and Courthouse Decorum~~

~~——— At its March 1979 meeting the Judicial Conference of the United States amended its March 1962 resolution pertaining to courtroom photographs to read as follows:~~

~~"RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings."~~

~~——— In the Northern District of Indiana the term "environs" means all areas upon the same floor of the building on which a courtroom, jury assembly room, grand jury room or clerk's office is located. Consistent with the Resolution of the Judicial Conference of the United States, and this court's interpretation of the term "environs," the taking of photographs, sound recording (except by the official court reporters in the performance of their duties), broadcasting by radio, television, telephone, or other means, in connection with any judicial proceeding on or from the same floor of the building on which a courtroom is located are prohibited. Provided, however, that incidental to investiture, ceremonial or naturalization proceedings, a judge of this court may, in his or her discretion, permit the taking of photographs, broadcasting, televising, or recording. *And provided further*, that video depositions may be taken in the environs of the court upon written approval by a judge of this court.~~

~~——— Cellular telephones, any device containing a cellular telephone, including Personal Digital Assistants (PDAs), and pagers are permitted in the federal courthouses in the Northern District of Indiana, but must be deposited, and only used at, the Court Security station at the front entrance of each building. Building personnel and federal law enforcement officers may have cellular telephones in the district courthouses subject to the following:~~

- ~~——— (a) Building personnel shall not be allowed to bring cellular telephones into any courtroom in this district.~~
- ~~——— (b) The United States Marshal and all Deputy Marshals shall be allowed to bring cellular telephones into the courtrooms, provided the cellular telephones are switched to a vibrate (rather than an audible) mode prior to entry.~~

~~(c) Visiting federal law enforcement personnel who have been approved by the United States Marshal's Service to carry cellular telephones are authorized to carry them directly to and from the agency office they are visiting, but must deposit them there for the duration of their visit.~~

Committee Comments

This rule is shown as deleted in favor of a new combined Local Rule 83.3.

~~L.R. 83.4~~

Broadcasting and Publicity

~~———— At its March 1979 meeting the Judicial Conference of the United States amended its March 1962 resolution pertaining to courtroom photographs to read as follows:~~

~~———— “RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.”~~

~~———— In the Northern District of Indiana the term “environs” means a courtroom, jury assembly room, grand jury room or clerk’s office and all common areas on the same floor. The taking of photographs, sound recording (except by the official court reporters in the performance of their duties), and broadcasting by radio, television, or other means within these areas, are prohibited. *Provided*, however, that incidental to investitive, ceremonial or naturalization proceedings, a judge of this court may permit the taking of photographs, broadcasting, televising, or recording.~~

Committee Comments

This rule is shown as deleted in favor of a new combined Local Rule 83.3.

L.R. 83.5

Bar Admission

(a) **Bar Membership.** In all cases filed in, removed to, or transferred to this court, all parties, except as provided in subsection (c), must be represented of record by a member of the bar of this court. The bar of this court shall consist of persons admitted to practice by this court and who have signed the roll of attorneys, who have not been disbarred or suspended, or who have not resigned.

(b) **Admission.** Any attorney admitted to practice by the Supreme Court of the United States or the highest court of any state may become a member of the bar of this court upon motion by a member of the bar of this court, if the court is satisfied that the **applicant is a member in good standing of the bar of every jurisdiction to which the applicant is admitted to practice and that the applicant is of good** applicant's private and professional character is good from the assurance of the movant or upon report of a committee appointed by the court. Upon being admitted, the applicant shall take a prescribed oath or affirmation, certify that ~~he or she~~ **the applicant** has read and will abide by the Seventh Circuit's Standards for Professional Conduct, certify that ~~he or she~~ **the applicant** has read and will abide by the local rules of this court, pay the required fees (except law clerks to judges of this court shall not be required to pay such fees), sign the roll of attorneys, register for electronic case filing, give a current ~~post-office~~ address, and agree to notify the clerk promptly of any change thereof, whereupon the attorney's admission will be entered upon the records of this court with certificate to issue accordingly.

(c) **Pro Se, Pro Hac Vice, and United States Government Appearances.** A person not a member of the bar of this court shall not be permitted to practice in this court or before any officer thereof as an attorney, unless:

- (1) such person appears on his or her own behalf as a party, or
- (2) such person is admitted to practice in any other United States Court or the highest court of any state, **is a member in good standing of the bar of every jurisdiction to which the applicant is admitted to practice**, is not currently under suspension ~~or subject to other disciplinary action with respect to his or her practice~~, has certified that he or she will abide by the local rules of this court and the Seventh Circuit Standards of Professional Conduct, ~~and is~~ **has made** ~~on~~ application to this court, ~~and~~ **has made** payment of the required fee, ~~and has been~~ **granted leave by this court** to appear in a specific action, or
- (3) such person appears as attorney for the United States, or any agency thereof or any officer of the United States or of an agency thereof.

(d) **Foreign Legal Consultants.** There is no admission to this bar for Foreign Legal Consultants, as provided for in Rule 5 of the Indiana Rules for the Admission to the Bar and the Discipline of Attorneys.

(e) **Local Counsel.** Whenever necessary to facilitate the conduct of litigation, this court may require any attorney appearing in any action in this court who resides outside this district to retain as local counsel a member of the bar of this court who is resident of this district.

(f) **Standards.** The Rules of Professional Conduct, as adopted by the Indiana Supreme Court, and the Standards for Professional Conduct, as adopted by the Seventh Circuit, shall provide standards of conduct for those practicing in this court. The Seventh Circuit's Standards for Professional Conduct are set out in an Appendix to these Rules.

Committee Comments

The Committee's proposed changes correspond to changes recommended by the Committee to the attorney admission forms currently utilized by the court. Specifically, the Committee added language to both subsections (b) and (c) which requires the applicant to be a member in good standing of the bar of every jurisdiction to which the applicant is admitted to practice. This responds to a new Judicial Conference Policy requiring courts to gather sufficient information of bar membership and verify that information. In addition, the Committee recommends that a General Order be adopted by the District Judges adopting the revised forms.

L.R. 83.6

Disciplinary Action Against Attorneys

(a) **Effect of an Appearance in this Court.** Any attorney authorized to appear on behalf of a client in this court is deemed admitted to practice before this court and is subject to discipline in this court.

(b) **Violations of Standards for Professional Conduct**

- (1) Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violate the standards of professional conduct identified in L.R. 83.5(f) constitute misconduct, whether or not the act or omission occurred in the course of an attorney-client relationship.
- (2) When an attorney admitted to practice before this court engages in misconduct, the attorney may be disbarred or, suspended from practice before this court, reprimanded, or subjected to other disciplinary action in accordance with the grievance process established under L.R. 83.6(c).

(c) **Grievance Process.**

(1) **Establishment of the Grievance Committee**

- (A) The judges of the district court shall appoint a five member panel to serve as a Grievance Committee (“Committee”) for the Northern District of Indiana. The Chief Judge shall designate one member as the chairperson to convene the Committee.
- (B) The Committee shall consist of members of the bar of this court, including at least one member from each of the divisions of the court.
- (C) Committee members shall serve for a period of five years and may be reappointed by the judges of the district court. Upon receiving notification that a Committee member is unable or unwilling to serve the entirety of the member’s appointed term, the judges of the district court shall promptly select a replacement Committee member. The terms of

the Committee members will be staggered, with one member replaced or the term renewed annually by the district court. The initial Committee members will serve terms from one to five years so as to establish this rotation. The Committee will determine at its initial meeting which members will serve these initial terms of service.

- (D) The clerk shall either serve or designate a deputy clerk to serve as secretary to the Committee, responsible for maintaining all Committee records. The designee shall be a non-voting member of the Committee.
- (E) Committee members shall serve without compensation, but insofar as possible, their necessary expenses shall be paid by the clerk from the Library Fund.
- (F) By January 31 of each year, the Committee shall provide the district court with a written report of its actions during the previous calendar year. The report shall include information concerning the complaints filed, the number of pending investigations, and the disposition of complaints.
- (G) The members of the Committee, with respect to their actions in such capacity, shall be considered as representatives of, and acting under the powers and immunities of, the district court; and they shall enjoy all such immunities while acting in good faith in their official capacities.
- (H) Any three or more members shall constitute a quorum and may act on behalf of the Committee.

(2) **Filing a Grievance**

- (A) The clerk shall maintain a form complaint that may be utilized to initiate a grievance proceeding against an attorney admitted to practice before this court. A complaint shall identify the attorney and provide a short and plain statement of the claim of misconduct. The complaint shall be verified and filed under seal with the clerk. Once filed, the clerk shall present the filing to the Committee. The complaint shall remain under seal until such time as the Committee determines that there is probable cause to investigate the complaint.

- (B) A judge of this court may initiate a grievance proceeding with the entry of an order in a pending case.
- (C) The secretary of the Committee shall promptly provide a copy of the complaint or order to all members of the Committee.

(3) **Procedures Before the Grievance Committee**

- (A) Upon receiving a complaint or order, the Committee shall do one or more of the following:
 - (i) Determine that the complaint or order raises a substantial question of misconduct justifying further inquiry that should be pursued by the Committee; or
 - (ii) Determine that the complaint or order raises a substantial question of misconduct that should be referred to the appropriate grievance committee of the Indiana Bar or other disciplinary agency with jurisdiction over the attorney; or
 - (iii) Determine that the complaint or order raises no substantial question of misconduct and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the clerk and complaining person or judge that no further action or investigation is warranted. It shall also notify the attorney that a claim of misconduct was filed and that the Committee determined to take no further action. The Committee shall supply the attorney with a copy of the complaint or order.
- (B) If the Committee determines to conduct a further investigation, the Committee shall decide how and to what extent to conduct the investigation. It shall also notify the attorney of the investigation, provide the attorney with a copy of the complaint or order, and direct the attorney to file with the clerk a written response to the complaint or order within (30) days. **The response shall be under seal unless the attorney files a written request with the Committee to have it unsealed.**
- (C) The Committee shall be vested with such powers as are necessary to the proper and expeditious investigation of any claim of misconduct, including the power to interview witnesses, to compel the attendance of

witnesses by subpoena, to take or cause to be taken the deposition of any witness, to secure the production of documentary evidence, and to administer oaths.

(D) After completing its investigation, the Committee shall either:

- (i) Determine to hold a formal hearing; or
- (ii) Determine that no substantial question of misconduct exists and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the clerk and complaining person or judge that no further action is warranted, and it shall also notify the attorney that no further action will be taken by the Committee.

(E) If the Committee determines to hold a formal hearing, it shall schedule the hearing as promptly as possible, provided, however, that delays in the hearing shall not affect the jurisdiction of the Committee. The attorney shall have the right to be present, to be represented by counsel, to present evidence, and to confront and cross-examine witnesses. In conducting the hearing, the Federal Rules of Evidence shall guide the Committee. A record shall be made of the hearing.

(F) After the hearing, the Committee shall either:

- (i) Determine that no substantial question of misconduct exists and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the clerk and complaining person or judge that no further action is warranted, and it shall also notify the attorney that no further action will be taken by the Committee; or
- (ii) Determine that the attorney's misconduct merits disciplinary action. Among the actions which the Committee can recommend are one or more of the following:
 - (aa) A private reprimand;
 - (bb) A public reprimand;

- (cc) Suspension of the attorney from the bar of the district court;
 - (dd) Disbarment of the attorney from the district court; and
 - (ee) A referral of the matter to another appropriate disciplinary board for disciplinary action.
 - (G) At any point during the investigation or during or after the hearing, the attorney can propose a disciplinary action for the claim of misconduct. If the Committee believes that the proposed disciplinary action is appropriate, it can recommend the imposition of that action in lieu of further proceedings before the Committee.
 - (H) All investigations, deliberations, hearings, and other proceedings of the Committee, as well as all documents presented to the Committee, shall remain confidential. All meetings and hearings of the Committee shall be held in camera and the business conducted by the Committee shall remain confidential. In its judgment, however, the Committee may disclose some or all aspects of its proceedings to the district court judges, to complainants, and to other disciplinary committees.
- (4) Proceedings Before the District Court
- (A) If the Committee recommends that disciplinary action be taken against an attorney, it shall forward its recommendation, along with a written report of its findings and conclusions, to the Chief Judge of this court, and, if the matter involves conduct before the United States Bankruptcy Court, to the Chief Judge of that Court. The written report shall be a public record, provided, however, any recommendation of a private reprimand shall remain under seal.
 - (B) Upon receiving a written report by the Committee finding that misconduct occurred, setting forth specific facts in support of its conclusion and recommending disciplinary action, the Chief Judge shall issue an order requiring the attorney to show cause in writing why the Committee's findings and recommendations should not be adopted by the court. Within 30 days after service of the show cause order, the attorney may file a written response with the clerk. After considering the attorney's response, if any, the Chief Judge, upon a majority vote of

the district judges of the court – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority vote of the district court and bankruptcy judges – may adopt, modify, or reject the Committee’s findings and recommendations without a hearing, or, if deemed appropriate, the Chief Judge may set the matter for a hearing before a judicial officer.

- (C) The designated judge shall conduct a hearing promptly and issue a report to the district court which includes proposed findings of fact and a recommended disposition of the case. In conducting the hearing, the Federal Rules of Evidence shall guide the designated judge.
- (D) The Chief Judge, upon the majority vote of the district judges of the court, – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority vote of the district court and bankruptcy judges – may adopt, modify, or reject the findings and recommendations or take such other action as deemed appropriate. Notice of the disposition shall be provided to the attorney, the clerk, the complaining person or judge, and the Committee chairperson.

(d) **Attorneys Convicted of Crimes.**

- (1) Upon the filing with this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the court shall enter an order immediately suspending that attorney, (whether the conviction resulted from a plea of guilty, nolo contendere, or from a verdict after trial or otherwise), and regardless of the pendency of any appeal or other pleading attacking the determination of guilt, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the court may set aside such order when it appears in the interest of justice to do so.
- (2) The term “serious crime” shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime.”

- (3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.
- (4) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Chief Judge shall in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to the Grievance Committee for the institution of a disciplinary proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.
- (5) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a “serious crime,” the Chief Judge may refer the matter to the Grievance Committee for whatever action the Committee deems warranted, including the institution of a disciplinary proceeding; provided, however, that the Chief Judge may, in his or her discretion, make no reference with respect to convictions for minor offenses.
- (6) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.
- (7) An attorney admitted to practice before this court shall, upon being convicted of a serious crime in any court of the United States, or the District of Columbia, or any state, territory, commonwealth, or possession of the United States, promptly inform the clerk of such action.

(e) **Discipline Imposed by Other Courts**

- (1) Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the clerk of such action.
- (2) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been

disciplined by another court, the Chief Judge shall forthwith issue a notice directed to the attorney containing:

- (A) a copy of the judgment or order from the other court; and
 - (B) an order to show cause directing that the attorney inform this court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (4) hereof that the imposition of the identical discipline (other than payment of a fine) by the court would be unwarranted and the reasons therefor.
- (3) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.
- (4) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (e)(2) above, the court shall impose the identical discipline (other than payment of a fine) unless the respondent-attorney demonstrates, or the court finds that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:
- (A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - (B) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject; or
 - (C) that the imposition of the same discipline by this court would result in grave injustice; or
 - (D) that the misconduct established is deemed by this court to warrant substantially different discipline.

Where the court determines that any of said elements exist, the court shall enter such other order as it deems appropriate.

- (5) In all other respects, a final adjudication in another court that an attorney has engaged in an act or pattern of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.
- (6) The Chief Judge may at any stage refer the matter to the Grievance Committee to conduct disciplinary proceedings or to make recommendations to the court for

appropriate action in light of the discipline imposed by another court or disciplinary authority.

(f) **Disbarment on Consent or Resignation in Other Courts**

- (1) Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending shall, upon the filing with the clerk a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court.
- (2) Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the clerk of such disbarment on consent or resignation.

(g) **Disbarment on Consent While Under Disciplinary Investigation or Prosecution in this Court**

- (1) Any attorney admitted to practice before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment from practice before this court, but only by delivering to the clerk an affidavit stating that the attorney desires to consent to disbarment and that:
 - (A) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
 - (B) The attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
 - (C) The attorney acknowledges that the material facts so alleged are true; and

- (D) The attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.
- (2) Upon receipt of the required affidavit, the clerk shall submit the affidavit to the Chief Judge for entry of an order disbarring the attorney from practice before this court.
- (3) The order disbarring the attorney on consent from practice before this court shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

(h) **Reinstatement.**

- (1) **Automatic Reinstatement.** An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred from practice before this court may not resume practice until reinstated by order of this court.
- (2) **Time of Application for Reinstatement Following Disbarment.** A person who has been disbarred from practice before this court after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.
- (3) **Reinstatement Following Reciprocal Discipline.** An attorney, who has previously been the subject of reciprocal discipline and subsequent termination by another court and also disbarred or suspended from practice in this court, may petition for reinstatement by filing a petition together with a certified copy of the judgment or order of the other court granting reinstatement. Upon receipt of the petition and certified reinstatement judgment or order, the Chief Judge shall promptly review the petition as well as any findings and conclusions of another court, and recommend to the other judges of this court whether or not in his/her opinion the petition and/or findings of another court sufficiently establish the fitness of petitioner to practice law so that he should be reinstated to the roll of attorneys without further hearing. If, after receiving the recommendations of the Chief Judge, a majority of the active district judges of the court – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority of the district court and bankruptcy judges – agree to reinstatement without further evidence or hearing, the court shall enter a judgment accordingly and the petitioner shall be reinstated. If, on the other hand, after receiving and

considering the recommendation of the Chief Judge a majority of the active district judges of the court – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority of the district court and bankruptcy judges – request additional evidence or hearing prior to making a decision on the petition, a hearing shall be scheduled in accordance with Section (h)(4) of this rule.

- (4) **Hearing on Application for Reinstatement.** If a hearing is required to rule on a petition for reinstatement, the Chief Judge shall promptly refer the petition to the Grievance Committee for a hearing at which the petitioner shall have the burden of establishing by clear and convincing evidence that he/she has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his/her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive to the public interest. Upon completion of the hearing the Committee shall make a full report to the court. The Committee shall include its findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.
- (5) **Order.** If, after consideration of the Committee's report and recommendation, and after such a hearing as the court may direct, a majority of the district judges – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority of the district court and bankruptcy judges – finds that the petitioner is unfit to resume the practice of law, the petition shall be denied. If, after consideration of the Committee's report and recommendation and after such a hearing as the court may direct, the majority of the active district judges – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority of the district court and bankruptcy judges – finds that the petitioner is fit to resume the practice of law, the court shall reinstate the petitioner, provided that the reinstatement may be made conditional:
 - (A) Upon the payment of all or part of the costs of the proceedings, and the making of partial or complete restitution to all parties harmed by the conduct of the petitioner which led to the suspension or disbarment;
 - (B) If the petitioner was suspended or disbarred from practice before this court for five years or more, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment from practice before this court; and

- (C) Upon any other terms which the court in its discretion deems appropriate.
- (6) **Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.
- (7) **Deposit for Costs of Proceeding.** Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.
- (i) **Service of Papers and Other Notices.** Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at his or her last known address.
- (j) **Duties of the Clerk.**
 - (1) Upon being informed that an attorney admitted to practice before this court has been convicted of any crime, the clerk shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If a certificate has not been so forwarded, the clerk shall promptly obtain a certificate and file it with this court.
 - (2) Upon being informed that an attorney admitted to practice before this court has been subjected to discipline by another court, the clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and, if not, the clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.
 - (3) The clerk shall promptly notify the appropriate disciplinary agency with jurisdiction over the attorney of any criminal conviction in this court or any discipline imposed pursuant to this rule.
 - (4) The clerk shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

- (5) The clerk shall serve as the official custodian of all records and shall distribute to the appropriate person or entity communications filed in these actions.

(k) **Other Disciplinary Powers.** These provisions do not apply to or limit the imposition of sanctions or other disciplinary or remedial action as may be authorized by the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, or through exercise of the inherent or statutory powers of the court in maintaining control over proceedings conducted before it, such as proceedings for contempt under Title 18 United States Code or under Fed. R. Crim. P. 42.

Committee Comments

Upon the recommendation of the Grievance Committee, the Local Rules Advisory Committee recommends that the rule be amended to allow an attorney to "unseal" his or her response to the complaint given that the complaint itself is to be unsealed if it moves forward in the process. The proposed change appears at paragraph (c)(3)(B).

The Grievance Committee also suggested a "clear and convincing" standard of proof be imposed as the current rule is silent on the point. The Grievance Committee has been requested to offer a specific set of amendments as it would appear that the burden will likely shift; for example, an attorney would not have the burden during an initial grievance, but would probably be required to bear it while pursuing a petition for reinstatement. Accordingly, since it may take some fairly careful drafting to achieve the Grievance Committee's desired intent, they have been invited to offer an initial draft for the Advisory Committee's consideration.

L.R. 83.7

Duty of Counsel to Accept Appointments in Certain Civil Actions

Every member of the bar of this court shall be available to represent or assist in the representation of indigent parties whenever reasonably possible.

- (a) **Appointment Procedure.** If the district judge or magistrate judge to whom a case has been assigned determines that representation by counsel of a party proceeding *in forma pauperis* is warranted under 28 U.S.C. § 1915 (e)(1) or 42 U.S.C. § 2000e-5(f), the district judge or magistrate judge shall direct the clerk to request an attorney who is a member of the bar of this court to represent the indigent party.
- (b) **Entry of Appearance.** An attorney agreeing to accept such appointment shall enter an appearance on behalf of the indigent party within **fourteen (14)** days of the entry of the court's notice or order of appointment.
- (c) **Representation, Relief from Appointment, and Discharge.** Continued representation of an indigent party by appointed counsel, relief from appointment, and discharge of counsel, shall be at the discretion of the district judge or magistrate judge.
- (d) **Payment of Expenses.** An attorney appointed pursuant to the court's rules to represent an indigent party may petition the court for payment, from the District Court Library and Court Administration Fund, of **appropriate and reasonable** expenses **that may be or were** incurred in the preparation and presentation of the proceeding, subject to the following restrictions:
 - (1) Such petition shall be made by motion filed with the court **either prior to incurring the expenses or** within ninety (90) days of the date the expenses were incurred. The motion may be made *ex parte*. The motion shall be accompanied by sufficient documentation to permit the court to determine that the request for payment is appropriate and reasonable, ~~and that the amounts requested have actually been paid out.~~
 - (2) Only those expenses associated with preparation and presentation of a civil action in the United States District Court for the Northern District of Indiana will be approved for payment. No expenses associated with the preparation of any appeal shall be payable.

- (3) Any costs or fees taxed as part of a judgment obtained by an adverse party against a party for whom counsel was appointed pursuant to the rules of this court are not payable.
- (4) In any case in which an appointed attorney receives any fee award, any amounts the attorney has received from the Fund as payment for expenses shall be promptly repaid to the Fund.

Committee Comments

The proposed changes to subsection (d) and (d) (1) are intended by the Committee to permit attorneys appointed to represent indigent clients to request reimbursement of appropriate and reasonable expenses incurred in the course of their representation. The proposed amendments enable attorneys to petition the Court for pre-approval of expenses as well as reimbursement for expenses incurred without preapproval provided that the expenses are “appropriate and reasonable.” The Committee has also suggested amendments to the District Court Library Fund to eliminate the thresholds that are currently in place for the reimbursement of expenses.

At paragraph (b) “(15) days” has been amended to “(14) days” to comply with the time amendments coming effective on December 1, 2009.

L.R. 83.8

Appearance and Withdrawal of Appearance

- (a) General. **Except for attorneys representing the United States or an agency thereof**, each attorney representing a party, whether in person or by filing any document, must file a separate Notice of Appearance for such party.
- (b) Removed and Transferred Cases. Any attorney of record whose name does not appear on this Court's docket following the removal of a case from state court must file a Notice of Appearance or a copy of his/her appearance previously filed in state court.

Within ~~20~~ **21** days of removal or transfer of a case to this Court, any attorney of record who is not admitted to practice before this Court must comply with this Court's admission policy, as set forth in Local Rule 83.5.

- (c) Withdrawal of Appearance. Counsel desiring to withdraw an appearance in any action shall file a motion requesting leave to do so. ~~Such motion shall fix a date for such withdrawal.~~ Counsel shall file with the court satisfactory evidence of written notice to the client at least ~~five~~ **seven** days in advance of **the filing of such withdrawal date motion**, unless other counsel has entered an appearance.

Committee Comments

With respect to paragraph (a) the Committee intends to except attorneys representing the United States from filing a notice of appearance so that those attorneys have greater flexibility in appearing for the government.

In addition, paragraph (b) is amended from 20 days to 21 days, and paragraph (c) is amended from 5 days to 7 days. Identical changes are contemplated in the Southern District.

L.R. 83.9
Student Practice Rule

(a) **Purpose.** Effective legal service for each person in the Northern District of Indiana, regardless of that person's ability to pay, is important to the directly affected person, to our court system, and to our whole citizenry. Law students, under supervision by a member of the bar of the District Court for the Northern District of Indiana, may staff legal aid clinics organized under city or county bar associations or accredited law schools, or which are funded pursuant to the Legal Services Corporation Act. Law students and graduates may participate in legal training programs organized in the offices of the United States Attorney or Federal Community Defender.

(b) **Procedure.** A member of the legal aid clinic, in representation of clients of such clinic, shall be authorized to advise such persons and to negotiate and appear in all courts of this District in criminal and civil matters on their behalf. These activities shall be conducted under the supervision of a member of the bar of the District Court for the Northern District of Indiana. Supervision by a member of this bar shall include the duty to examine and sign all pleadings filed on behalf of a client. Supervision shall not require that any such member of the bar be present in the room while a student or law graduate is advising a client or negotiating on his or her behalf nor that the supervisor be present in the courtroom during a student's or graduate's appearance except in criminal or juvenile cases carrying a penalty in excess of six (6) months. In no case shall any such student or graduate appear in any ~~federal~~ court of this District without first having received the approval of the judge of that court for the student's appearance. Where such permission has been granted, the judge of any court may suspend the trial proceedings at any stage where the judge in his or her sole discretion determines that such student's or graduate's representation is professionally inadequate and substantial justice so required. Law students or graduates serving in a United States Attorney's program may be authorized to perform comparable functions and duties as assigned by the United States Attorney subject to all the conditions and restrictions in this rule and the further restriction that they may not be appointed as Assistant United States Attorneys. Law students or graduates serving in a Federal Community Defender program may be authorized to perform comparable functions and duties as assigned by the Executive Director subject to all the conditions and restrictions in this rule.

(c) **Eligible Students.** Any student in **good standing in** an accredited law school ~~who has received a passing grade in law school courses and~~ **who** has completed the ~~freshman~~ **first** year shall be eligible to participate **pursuant to this rule** ~~in a legal aid clinic~~ if (1) the student meets the academic and moral standards established by the dean of that school, and (2) the school certifies to the court that the student has met the eligibility requirements of this rule.

Committee Comments

No substantive changes have been made. However, the Committee recommends the above editing changes to clarify that any student who wishes to participate must be in good standing with his or her law school.

L.R. 200.1

Bankruptcy Cases and Proceedings

(a) Matters Determined by the Bankruptcy Judges.

- (1) Subject to paragraph (a)(3)(B), all cases under Title 11 of the United States Code, and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges. It is the intention of this court that the bankruptcy judges be given the broadest possible authority to administer cases properly within their jurisdiction, and this rule shall be interpreted to achieve this end.
- (2) Pursuant to 28 U.S.C. § 157(b)(1), the bankruptcy judges shall hear and determine all cases under Title 11 and all core proceedings (including those delineated in 28 U.S.C. § 157(b)(2)) arising under Title 11, or arising in a case under Title 11, and shall enter appropriate orders and judgments, subject to review under 28 U.S.C. § 158.
- (3) The bankruptcy judges shall hear all non-core proceedings related to a case under Title 11.
 - (A) By Consent: With the consent of the parties, a bankruptcy judge shall conduct hearings and enter appropriate orders or judgments in the proceeding, subject only to review under 28 U.S.C. § 158.
 - (B) Absent Consent: Absent consent of the parties, a bankruptcy judge shall conduct hearings and file proposed findings of fact and conclusions of law and a proposed order or judgment with the bankruptcy clerk. The bankruptcy judge may also file recommendations concerning whether the review of the proceedings should be expedited, and whether or not the basic bankruptcy case should be stayed pending district court termination of the non-core proceedings. The bankruptcy clerk shall serve copies of these documents upon the parties. Within ~~10~~ 14 days of service, any party to the proceedings may file objections with the bankruptcy clerk. Any final order or judgment shall be issued by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected. (Review of interlocutory

orders shall be had following the procedure specified in paragraph (d) of this rule.)

- (C) Signifying Consent: At time of pre-trial, or earlier, upon motion of a party in interest, the parties shall:
 - (1) Stipulate in writing that the proceeding is a core proceeding;
 - (2) Stipulate in writing that the proceeding is a non-core proceeding, but that the bankruptcy judge can determine the matter and enter a final order subject to review pursuant to 28 U.S.C. § 158;
 - (3) Stipulate that the proceeding is a non-core proceeding, the bankruptcy judge finds the matter is a non-core proceeding and at least one party refuses to have the bankruptcy judge determine the matter; or
 - (4) State that there is no agreement between the parties as to whether the proceeding is a core or non-core proceeding and at least one party refuses to have the bankruptcy judge determine the matter if it is determined to be a non-core proceeding;

Attached as an Appendix to this rule is an example of a stipulated order which may be used at the pretrial conference.

(b) Matters to be Determined or Tried by District Judges.

- (1) Motions to withdraw cases and proceedings to the District Court.
 - (A) The district judge shall hear and determine any motion to withdraw any case, contested matter, or adversary proceeding pursuant to 28 U.S.C. § 157(d).
 - (B) All such motions shall be accompanied by a separate supporting brief and any appropriate affidavits. The motion shall be filed with the bankruptcy court and served upon all appropriate parties in interest. Unless the bankruptcy court directs otherwise, any response and opposing affidavits shall be served and filed within the time required by

L.R. 7.1 and the movant may serve and file any reply thereto within the time provided in that rule.

- (C) Upon the expiration of the time for filing briefs concerning the motion, the motion and all materials submitted in support thereof and in opposition thereto will be transmitted to the district court for a determination. The bankruptcy judge may submit a written recommendation concerning the motion, the effect of withdrawal upon the disposition of the underlying bankruptcy case, and whether the disposition of the motion should be expedited. Any such recommendation shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.
- (D) Should the district judge grant the motion to withdraw, the case, contested matter or adversary proceeding may be referred back to the bankruptcy judge for proposed findings of fact and conclusions of law and a proposed order or judgment in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.

(2) Personal Injury or Wrongful Death Tort Claims.

- (A) Trials and Pre-Trial Proceedings: In proceedings in which a personal injury or wrongful death tort claim is required under 28 U.S.C. § 157(b) to be tried in a district court, the proceeding shall be administered by the bankruptcy judge until it is ready for a final pre-trial conference before a district judge. The district judge shall conduct the trial of the proceeding.

The bankruptcy judge may submit a written recommendation concerning the effect of the proceeding upon the disposition of the underlying bankruptcy petition and whether the trial of the proceeding should be expedited, copies of which shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.

- (B) Motions to Transfer Venue: The bankruptcy judges shall make a recommendation concerning a motion by a party under 28 U.S.C. § 157(b)(5) for a transfer of venue of personal injury or wrongful death tort claims. All such motions shall be filed with the bankruptcy court and shall first be heard by a bankruptcy judge, in accordance with such procedures as the bankruptcy court may, by rule, adopt. The bankruptcy

judge shall make a recommendation concerning the disposition of the motion, copies of which shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule. The district judge may accept, reject or modify, in whole or in part, the recommendation of the bankruptcy judge and shall determine the disposition of the motion.

(c) **Jury Trial.**

(1) **Jury Trial Before a Bankruptcy Judge:** Jury trials before a bankruptcy judge ~~shall be held as permitted by applicable law~~ **are not permitted**. Issues arising under section 303 of Title 11 shall be tried by the bankruptcy judge without a jury.

(2) **Jury Trials Before a District Judge:**

(A) Where jury trials are not permitted before a bankruptcy judge, the party demanding a jury trial shall file a motion to withdraw the proceeding to the district court, in accordance with paragraph (b)(1) of this rule. The motion shall be filed at the same time as the demand for a jury trial. Unless excused by the district judge, the failure to file a timely motion to withdraw the proceeding shall constitute a waiver of any right to a trial by jury.

(B) In a personal injury or wrongful death tort claim, parties have the right to trial by jury. The demand for a jury trial must be properly made to preserve the right to a trial by jury.

(d) **Appeals to the District Court.** All appeals in core cases, in non-core cases heard by consent, and appeals of interlocutory orders entered by the bankruptcy judges in non-core cases heard by the bankruptcy court under subparagraph (a)(3)(B) of this rule shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by the Bankruptcy Rules.

(e) **Mandate Following a Decision on Appeal.** The court's mandate following a decision on appeal from the bankruptcy court consists of a certified copy of the court's judgment and the court's written opinion, if any. Unless the court orders otherwise, the clerk will issue the mandate to the clerk of the bankruptcy court:

(1) immediately, when an appeal is dismissed voluntarily;

- (2) seven days after the expiration of the deadline for filing any notice of appeal from this court's decision, unless a notice of appeal is filed; or
- (3) if a notice of appeal is filed, seven days after the conclusion of any proceedings undertaken as a result of the Seventh Circuit's mandate to this court, unless those proceedings result in the entry of an order that could be the subject of a further appeal.

The mandate is effective when issued.

(f) **Filing of Papers.** While a case or proceeding is pending before a bankruptcy judge, or prior to the docketing of an appeal in the district court as set forth in the Bankruptcy Rules, all pleadings and other papers shall be filed with the bankruptcy clerk. After the case or non-core proceeding is assigned to a district judge, or after the district clerk has given notice to all parties of the date on which the appeal was docketed, all pleadings shall bear a civil case number in addition to the bankruptcy case number(s) and shall be filed only with the district court clerk.

(g) **Submission of Files to the District Court; Assignment to District Judges.** After the expiration of the time for filing objections under subparagraph (a)(3)(B), upon receipt of any order by a district judge pursuant to 28 U.S.C. § 157(d) or upon the docketing of an appeal in the district court as specified in paragraph (d), the bankruptcy clerk shall submit the file for the case or proceeding to the district court clerk. The district court clerk shall affix a civil number to each submission, and shall make the assignment to a district judge in accordance with the usual system for assigning civil cases.

(h) **Local Bankruptcy Rules.** The bankruptcy judges are authorized to make and amend rules governing the practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction, in accordance with the requirements of Bankruptcy Rule 9029. Unless the district court orders otherwise, such rules shall also apply to any bankruptcy case or proceeding in which the order of reference has been withdrawn.

Committee Comments

In those rare instances where the bankruptcy court makes proposed findings of fact and conclusions of law and submits a proposed judgment, the current rule requires any objection to be filed within 10 days of service. The Committee recommends that this deadline be changed to 14 days to make it consistent with the upcoming change to rule 8002 and the deadline for filing a notice of appeal from bankruptcy court final orders and judgments.

Paragraph (c)(1) addresses jury trials in the bankruptcy court. The first sentence suggests jury trials might be a possibility, and they were when the rule was originally written. Since that time, however, things have become more restrictive. Although the opportunity for a jury trial in a bankruptcy

proceeding is limited, even if it is a possibility, it can only take place before a bankruptcy judge if it is specifically authorized and directed to do so by the district court and all parties consent. The consent of all parties is the complicating factor. No one, at least no one in the collective experience of the Districts' Bankruptcy Judges, demands a jury trial in bankruptcy court and consents. To the contrary, they make the demand, refuse to consent, and use those circumstances as the basis to seek withdrawal of the reference so that the matter can go to the district judge. Indeed, the right to a jury trial is the most common basis for seeking and granting withdrawal of the reference. As a result, even if the Bankruptcy Judges had the ability to preside over jury trials, the parties do not want that to occur and so nothing would be gained by formally giving bankruptcy judges the authority. Furthermore, the Bankruptcy Judges have expressed that they do not want or need such authority. As a result, the Committee recommends that the first sentence of the rule be revised to clarify that jury trials are not permitted before bankruptcy judges. The second sentence of (c)(1) concerning involuntary petitions should remain unchanged.

L.Cr.R. 16.1

Standard Orders in Criminal Cases

~~Requests for Discovery; Other Motions~~

~~(a) — A request for discovery or inspection pursuant to Fed. R. Crim. P. 16 shall be made at the arraignment or within ten (10) days thereafter.~~

~~—— (b) — At the arraignment or as soon thereafter as practicable, the court shall enter an appropriate order fixing the dates for the filing of and responses to, any other pretrial motions.~~

The court may issue a standard order at the arraignment in a criminal case which contains provisions for a trial date, pretrial discovery, and deadlines for the filing of and responses to pretrial motions, and any other matters.

Committee Comments

The Southern District has a Local Rule 2.1 which provides for the issuance of a standard order in criminal cases containing provisions for pleas, trial dates, attorney appearances, pretrial discovery, and other matters. The Committee recommends modifying our rule to make it as close as possible to the Southern District's rule but which allows for the differences between our divisions. Since the current arraignment procedure encompasses the specifics of the existing rule the Committee recommends its deletion.

L.Cr.R. 30.1

Instructions in Criminal Cases

In all criminal cases to be tried to a jury, all requests for instructions shall be filed with the clerk, ~~in triplicate, with citations to authority, not later than three (3) business days before trial which the parties may supplement at any time thereafter in accordance with Fed.R.Crim.P. 30, or at such other time during the trial as the court may direct.~~ Parties shall utilize the Seventh Circuit Pattern Jury Instructions whenever possible, and shall submit a request for those instructions by number only. Parties are ~~also~~ encouraged to submit **to the court** an additional copy of the non-pattern instructions ~~on a disk~~ **in a format** compatible with the word processing program of the court. ~~Exceptions to this requirement will be made only when the matters on which instruction is sought could not reasonably have been anticipated in advance of trial.~~

Committee Comments

The Southern District has no comparable rule. Magistrate Judges Rodovich, Cherry, and Cosbey all require the filing of a set of proposed final jury instructions agreed upon by the parties prior to the pretrial conference. All three also require the parties to file separate instructions for those that the parties cannot agree. Magistrate Judge Nuechterlein only requires the filing of instructions at least three days prior to trial and makes no reference to a joint filing.

The Committee also recommends deleting the triplicate filing requirement since it is neither needed nor currently observed. Similarly, the submission of a disk by the parties is somewhat antiquated with the increased usage of e-mail. Judges Springmann, Van Bokkelen, and Lozano all direct that the parties submit via email courtesy copies in WordPerfect or Word format to their chambers.

Finally, the Committee recommends deletion of the last sentence so as to avoid instances where there would be protracted argument over whether an instruction could have been reasonably anticipated, opting instead for the simple application of judicial discretion.

L.Cr.R. ~~45.1~~ 47.1

Continuances in Criminal Cases

A motion for continuance in a criminal case will be granted only if the moving party demonstrates that the ends of justice served by a continuance outweigh the best interest of the public and the defendant to a speedy trial, as provided by 18 U.S.C. § 3161(h)(8) (7), or that the continuance will not violate the Speedy Trial Act deadlines for trial because of some other reason. The moving party shall submit with the motion a proposed entry setting out the findings as to the ends of justice, or such other reason why the continuance will not violate the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*

Committee Comments

The proposed amendment to this rule reflects the statutory recodification of the Speedy Trial Act, 18 U.S.C. § 3161. Subsection (h)(8) was recodified to (h)(7). Southern District Rule 7.1 is identical to our rule before the most recent amendment identifying subsection (h)(8) as (h)(7).

The Committee recommends relating this rule to Federal Rule of Criminal Procedure 47 rather than 45. Therefore, the Committee recommends amending the local rule and renaming it 47.1.

L.Cr.R. ~~47.1~~ 47.2

**Petitions for Habeas Corpus and Motions Pursuant to
28 U.S.C. §§ 2254 and 2255 by Persons in Custody**

Petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. §§ 2254 and 2255 by persons in custody shall be in writing and signed under penalty of perjury. Such petitions and motions shall be on the form contained in the Rules following 28 U.S.C. § 2254, in the case of a person in state custody, or 28 U.S.C. § 2255, in the case of a person in federal custody, or on forms adopted by general order of this court, copies of which may be obtained from the clerk of the court.

Committee Comments

The Committee recommends renumbering this rule in light of its other recommendation to renumber L.Cr.R.45 to L.Cr.R. 47.1.

**Disposition of Post Conviction Petitions and Motions Brought
Pursuant to 28 U.S.C. § 2254 and § 2255 in Cases Involving Persons
Under a Sentence of Capital Punishment**

(a) Operation and Scope.

- (1) These rules shall apply to habeas corpus petitions brought pursuant to 28 U.S.C. § 2254 and § 2255 by petitioners under a sentence of capital punishment.
- (2) To the extent that these rules are inconsistent with any other local rules of this court, these rules shall apply.
- (3) The district judge to whom a case is assigned shall handle all matters pertaining to the case, including application for certificate of appealability, motion for stay of execution, consideration of the merits, second or successive petitions, remands from the Supreme Court of the United States or the United States Court of Appeals, and all incidental or collateral matters. This rule does not limit a district judge's discretion to designate a magistrate judge, pursuant to 28 U.S.C. § 636, to perform such duties as the district judge deems appropriate or for an emergency judge to act in the absence of the assigned district judge.
- (4) If a second or successive petition is filed in this court, the judge of this district to whom the second or successive petition is assigned ("second judge") shall communicate with the judge to whom earlier petitions were assigned ("first judge") and, if the first judge is not a judge of this court, also with the chief judge of the circuit.
- (5) Pursuant to the Criminal Justice Act (18 U.S.C. § 3006A) and 21 U.S.C. § 848(q), counsel shall be appointed for all prisoners in cases within the scope of these rules if the prisoner is not already represented by counsel, is financially unable to obtain representation, and requests that counsel be appointed.
- (6) If the district court grants or denies a stay of execution, it shall set forth the reasons for the decision.

- (7) The district judge to whom a case is assigned under these rules may make changes in procedures in any case when justice so required.

(b) **Filing of a Petition.**

- (1) Upon the filing of a petition within the scope of these rules, it shall be immediately assigned to a district judge under the usual practices of the court. The clerk shall immediately notify the judge of his or her assignment and shall thereafter promptly notify, by telephone, the designated representatives of the Attorney General of the state in which the petition is filed. The Attorney General of Indiana has the obligation to keep the court informed as to the office and home telephone numbers of their designated representatives.
- (2) In all petitions within the scope of this rule, the petitioner or movant shall file, within ~~10~~ 14 days of the day of filing of the petition or motion, a legible copy of the documents listed below. If a required document is not filed, the petitioner or movant shall state the reason for the omission. The required documents are:
- (A) prior petitions, with docket numbers, filed by petitioner in any state or federal court challenging the conviction and sentence challenged in the current petition;
- (B) a copy of, or a citation to, each state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons, or judgment involving an issue presented in the petition; and
- (C) such other documents as the district court may request.
- (3) A petitioner shall include in his or her petition all possible grounds for relief and the scheduled execution date. If an issue is raised in a second or successive petition that was not raised in a prior petition, the petitioner shall state the reasons why the issue was not raised and why relief should nonetheless be granted.
- (4) If an issue is raised that has not been exhausted in state court, was never raised in state court or was not raised on direct appeal in state court, the petitioner shall state the reasons why the issue was not raised and why relief should nonetheless be granted.

- (5) Upon the filing of a petition within the scope of these rules, the district court clerk shall immediately provide the petitioner with a copy of this rule and a copy of Circuit Rule 22 adopted by the United State Court of Appeals for the Seventh Circuit.
- (6) The clerk shall notify the clerk of the Court of Appeals of the filing of a petition within the scope of these rules, of significant events and the progress of the case, and of any subsequent appeal of such case. The clerk of this court shall send a copy of the final decision and any notice of appeal to the clerk of the state supreme court.

(c) **Preliminary Consideration of Judge.**

- (1) The district judge shall promptly examine a petition within the scope of these rules and, if appropriate, order the respondent to file an answer or other pleading or take such other action as the judge deems appropriate.
- (2) If the district judge determines, after examination of the petition, that the petition is a second or successive petition raising issues previously decided by a federal court, the district judge shall enter an appropriate order with a written finding so stating.

(d) **Priority.** The district judge shall give priority on his or her calendar to scheduling and deciding cases within the scope of these rules.

(e) **Motions for Immediate Stay of Execution.**

- (1) No motion for a stay of execution shall be filed unless accompanied by a petition for relief under 28 U.S.C. § 2254 or § 2255 which comports with these rules. The movant shall immediately notify opposing counsel by telephone of the filing.
- (2) The movant shall attach to the motion for stay a legible copy of the documents listed in section (b)(2) of this rule, unless the documents have already been filed with the court. If the movant asserts that time does not permit the filing of a written motion, he or she shall deliver to the clerk a legible copy of the listed documents as soon as possible. If a required document is not filed, the movant shall state the reason for the omission.

- (3) If the state has no objection to the motion for stay, the district court shall enter an order staying the execution.
- (4) If the district court determines that the petition or motion is not frivolous and a stay is requested, it shall enter an order staying the execution.
- (5) Following a decision on the merits, if the district court issues a certificate of probable cause, it shall enter an order staying the execution pending appeal. If the district court denies a certificate of probable cause, it shall not enter an order staying the execution pending appeal and it shall dissolve any stay of execution previously granted to petitioner by the district court.
- (6) Except in the case of emergency motions, parties shall file motions with the district court clerk during the normal business hours of the clerk's office. The motion shall contain a brief account of the prior actions of any court or judge to which the motion or a substantially similar or related petition for relief has been submitted.

(f) **Clerk's List of Cases.** The district court clerk shall maintain a separate list of all cases within the scope of these rules.

Committee Comments

Southern District Local Rule 6.1 addresses this process. Our rule and the Southern District's rule are substantially different. The rules between the districts are too difficult to reconcile. However, the Committee recommends extending the deadline in (b)(2) from 10 to 14 days, so as to be consistent with the time amendments becoming effective December 1, 2009. In addition, the rule needs to be renumbered as Local Rule 47.3 if the recommendation to change Local Rule 45.1 to 47.1 is implemented.

APPENDIX C. NOTICE TO *PRO SE* LITIGANT

(This form may be downloaded from the Northern District of Indiana's internet website at
www.innd.uscourts.gov)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
[] DIVISION

v.

Civil No.

NOTICE

You are hereby notified that we have filed a motion for summary judgment in your case.

Because you are not represented by counsel, you are hereby advised of your obligation to respond to the summary judgment motion, ~~in accordance with *Kincaid v. Vail*, 969 F.2d 594, 599 (7th Cir. 1992); *Timms v. Frank*, 953 F.2d 281, 285-86 (7th Cir.), cert. denied, 112 S.Ct. 2307 (1992); and *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982).~~

By the motion for summary judgment, we are asking to have this suit decided in our favor without a full scale trial, based on the evidence presented in the affidavits and documents attached to the motion. Any factual assertion in the affidavits will be accepted by the court as being true unless you submit your own affidavits or other **admissible** documentary evidence contradicting the assertion. Your

failure to respond in that way would be the equivalent of failing to present any evidence in your favor at a trial.

Rule 56 of the Federal Rules of Civil Procedure governs motions for summary judgment, and that rule must be complied with by you in submitting any further response to our motion. Rule 56 provides in part:

(c) (2) . . . The judgment shall be rendered forthwith if the pleadings, **discovery and disclosure materials, depositions, answers to interrogatories and admissions on file, together with the and any affidavits, if any,** show that there is no genuine issue as to any material fact and that the **movant** moving party is entitled to a judgment as a matter of law

(e) (1) **A** ~~S~~supporting and opposing affidavits shall be made on personal knowledge, ~~shall set forth~~ **out** such facts as ~~that~~ would be admissible in evidence, and ~~shall show affirmatively~~ that the affiant is competent to testify to **on** the matters stated ~~therein~~. **If a paper or part of a paper is referred to in an affidavit, a** ~~S~~sworn or certified copies of all papers or parts thereof referred to in an affidavit ~~shall~~ **must** be attached thereto or served ~~therewith~~ **the affidavit**. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or ~~further~~ **additional** affidavits. ~~When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.~~

(e) (2) **When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must--by affidavits or as otherwise provided in this rule--set out specific facts showing a genuine issue for trial. If the opposing party does not so respond,**

summary judgment should, if appropriate, be entered against that party.

Fed. R. Civ. P. 56 (emphasis added).

Under Rule 56 of the Federal Rules of Civil Procedure, you have a right to respond to our motion and accompanying sworn material by filing your own affidavit or other sworn responses. Although the mere filing of affidavits or other responsive materials will not guarantee the denial of our motion, your response will enable the court to consider more meaningfully all relevant factors. If you do not respond to the motion with your own affidavits or other admissible evidence to dispute the facts established by us, a summary judgment may be entered against you if, on the basis of the facts established by us, we are entitled to judgment as a matter of law. Unless you respond to this motion with sworn statements or other admissible evidence which contradicts important facts claimed by us in our sworn materials, the court will accept our uncontested facts as true. More importantly, you will lose this lawsuit, in whole or in part, if the court determines that, under those unchallenged facts, we are entitled to judgment under the law.

In the event you elect to respond to our motion, your response must include or be supported by sworn statements or other responsive materials. You cannot merely rely upon any conflict or inconsistency between the contents of the complaint and the affidavit(s) or other sworn materials filed in support of our motion. If you submit an affidavit or affidavits in support of your response, the facts in the affidavits must be personally known to the person making the affidavit and not be hearsay; the facts must be specific and not general. Merely denying the facts in the sworn material filed by us in support of our motion or giving opinions or beliefs is not enough.

If you oppose this motion for summary judgment, Northern District of Indiana Local Rule 56.1, states that you must file any response to the motion along with any supporting materials within ~~thirty~~ ~~(30)~~ **twenty-eight (28)** days from the date the motion is served. **"Upon your written request, the Court may, but is not required to, enlarge the time within which to respond; that is, give you more time to respond. Any request for additional time to respond to this motion should be filed before the time to act expires."**